Supreme Court, U.S.
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No. _____

05-109

In The Supreme Court of the United States

CHARLES M. IVEY, III, Trustee for the bankruptcy estate of J.G. Furniture Group, Incorporated,

Petitioner,

v.

GREAT-WEST LIFE & ANNUITY INSURANCE COMPANY,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI WITH APPENDIX

Charles M. Ivey, III
Counsel of Record
John M. Blust
IVEY, McCLELLAN,
GATTON & TALCOTT, L.L.P.
121 South Elm Street
Post Office Box 3324
Greensboro, North Carolina 27402
(336) 274-4658

Counsel for Petitioner

THE LEX GROUP DC • 1750 K Street, NW • Suite 475 • Washington, DC 20006
(202) 955-0001 • Fax: (202) 955-0022 • www.thelexgroupdc.com

QUESTIONS PRESENTED

I. WHETHER THE EMPLOYEE BENEFIT PLAN PRIORITY PROVIDED BY 11 U.S.C. SECTION 507(a)(4) CAN BE ASSERTED BY A THIRD-PARTY PROVIDER OF INSURANCE TO A DEBTOR.

II. WHETHER THE TERM "SERVICES RENDERED" AS USED IN 11 U.S.C. SECTION 507(a)(4)(A), IS LIMITED TO SERVICES RENDERED BY EMPLOYEES OF THE DEBTOR.

PARTIES TO THIS PROCEEDING

All parties to this proceeding are set forth in the caption.

CORPORATE DISCLOSURE STATEMENT

The Petitioner, Charles M. Ivey, III, is the Trustee in bankruptcy for J.G. Furniture Group, Inc., which was a Delaware corporation which had no parent corporation. No publicly-held company held 10% or more of the stock of J.G. Furniture, Inc.

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

COMES NOW Charles M. Ivey, III, Trustee in bankruptcy for J.G. Furniture Group, Inc. (hereinafter "J.G. Furniture"), petitioner herein, and respectfully represents that he is aggrieved by the final judgment of the United States Court of Appeals for the Fourth Circuit entered on April 20, 2005.

CITATIONS TO OFFICIAL REPORTS OF OPINIONS

The Opinion of the United States Court of Appeals for the Fourth Circuit appears at page App. 1 and is published.

The opinion and order of the United States District Court for the Middle District of North Carolina, appears at page App. 7 and is published.

JURISDICTIONAL STATEMENT

Petitioner seeks this Court's review of a decision entered on April 20, 2005 by the United States Court of Appeals for the Fourth Circuit. This Court has jurisdiction under 28 U.S.C. § 1254(1) to review the circuit court's decision on a writ of certiorari.

STATUTORY PROVISION INVOLVED

11 U.S.C. § 507(a)(4)

§ 507. Priorities

(a) The following expenses and claims have priority in the following order:

> (4) Fourth, allowed unsecured claims for contributions to an employee benefit plan—
>
> > (A) arising from services rendered within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first; but only
> >
> > (B) for each such plan, to the extent of—
> >
> > > (i) the number of employees covered by each such plan multiplied by $4,000; less
> > >
> > > (ii) the aggregate amount paid to such employees under paragraph (3) of this subsection, plus the aggregate amount paid by the estate on behalf of such employees to any other employee benefit plan.

STATEMENT OF THE CASE

On April 28, 1996, J. G. Furniture Group, Inc. ("J.G. Furniture") and Great West Life and Annuity Insurance Co. ("Great West") entered into a Services Contract under which Great West obligated itself to perform many of the administrative functions in connection with J.G. Furniture's medical benefits plan ("the Plan"), which covered employees of J.G. Furniture at its facility in Quakertown, Pennsylvania. Great West would receive payment from J.G. Furniture of administrative fees and reimbursement of employee health care claims paid on the Plan's behalf by Great West. The initial Contract extended through April 30, 1997, and was renewed for the Plan year beginning May 1, 1997.

Article 4 of the Services Contract expressly provided:

> Nothing herein will be deemed to constitute Great West a party to the Plan or to confer upon Great-West any authority to control respecting management of the Plan, authority or responsibility in connection with administration of the Plan or responsibility of the terms or validity of the Plan. . . The Contractholder [J.G. Furniture] and Fiduciary further agree that nothing herein will be deemed to impose upon Great-West any obligation to any Employee or Dependent under the Plan.

Contemporaneously with the execution of the Services Contract, Great West and J.G. Furniture entered into a "Stop Loss Contract" for the same term as the Services Contract. Under the Stop Loss Contract, medical claims by employees covered by the Plan were self-funded by J.G. Furniture up to a certain level of benefits to protect J.G.

Furniture from the expense of funding the Plan above the stop-loss level. J.G. Furniture paid Great West a monthly premium for this stop-loss coverage.

Providers of health care services to employees of J.G. Furniture sent claims directly to Great West, which processed and paid those claims in accordance with the Plan. Great West was then entitled to reimbursement by J.G. Furniture up to the stop-loss level for medical claims paid on behalf of J.G. Furniture. The Contract required J.G. Furniture to maintain sufficient funds in a bank account from which Great West was authorized to initiate wire transfers for the reimbursement amount due.

In August of 1997, J.G. Furniture closed its Quakertown, Pennsylvania facility and moved all production to High Point, North Carolina. Most of J.G. Furniture's Pennsylvania employees were terminated, but many continued to send payments to J.G. Furniture pursuant to COBRA to remain covered by its medical benefit plan.

On April 7, 1998, more than 180 days after its former Pennsylvania employees were terminated, J.G. Furniture filed a Voluntary Petition under Chapter 7 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Middle District of North Carolina. Charles M. Ivey, III was appointed as the Trustee in this bankruptcy proceeding.

Great West filed a priority claim in the total amount of $27,773.51 under 11 U.S.C. § 507(a)(4) for unpaid administrative fees, unpaid premiums and for unpaid reimbursements from J.G. Furniture for payments Great West made to medical service providers on behalf of former employees of the Debtor and their dependents.

The Trustee filed an Objection to the Claim of Great West on December 31, 2001 on the grounds that Great West was not entitled to priority status for its claim. It was the Trustee's position that 11 U.S.C. § 507(a)(4) priorities should only be available to the Debtor's employees and not insurance companies, and that the priority only covered services by employees rendered within 180 days before the date of the filing of the petition. Furthermore, the Trustee argued that the contracts between J.G. Furniture and Great West were separate from the employee benefit plan between J.G. Furniture and its employees. The United States Bankruptcy Court for the Middle District of North Carolina entered an Order on April 11, 2002 allowing the claim of Great West as a priority claim. The Trustee appealed this Order to the United States District Court, which affirmed the Bankruptcy Court in an Order entered on March 31, 2004.

The Trustee filed a timely Notice of Appeal of the Order of the United States District Court to the Fourth Circuit on April 9, 2004. The Fourth Circuit had appellate jurisdiction pursuant to 28 U.S.C. § 1291. Oral arguments were held on February 4, 2005 and the Fourth Circuit rendered an opinion on April 20, 2005 affirming the District Court and allowing the claim of Great West as a priority claim under 11 U.S.C. § 507(a)(4). The effect of the ruling is to allow a non-employee third-party insurance company to obtain the 11 U.S.C. § 507(a)(4) priority. This grant of priority is contrary to the presumption in a bankruptcy case that the Debtor's limited resources will be equally distributed among the creditors. *Ford Motor Credit Company v. Dobbins*, 35 F.3d 860 (4th Cir. 1994). Given this presumption, statutory priorities must be narrowly construed. *Id.* at 865. This petition seeks a narrow construction by the United States Supreme Court of 11 U.S.C. § 507(a)(4) which would properly preclude third-

party insurers from being granted an inappropriate employee benefit plan priority status.

ARGUMENT

I. THIS COURT SHOULD RESOLVE THE SPLIT AMONG THE CIRCUITS AS TO WHETHER THE PRIORITY AFFORDED BY 11 U.S.C. SECTION 507(a)(4) CAN BE ASSERTED BY THIRD PARTY PROVIDERS OF INSURANCE COVERAGE TO DEBTORS.

The Sixth, Tenth and Eighth Circuits have each denied the use of the priority provided for by 11 U.S.C. § 507(a)(4) to insurance companies which provided worker's compensation insurance coverage to debtors. *Travelers Prop. Cas. Corp. v. Birmingham-Nashville Express, Inc.* (*In re Birmingham-Nashville Express, Inc.*); 224 F.3d 511 (6th Cir. 2000); *State Ins. Fund v. Southern Star Foods, Inc.* (*In re Southern Star Foods, Inc.*), 144 F.3d 712 (10th Cir. 1998), and *Employers Ins. of Wausau, Inc. v. HLM Corp.* (*In re HLM Corp.*), 62 F.3d 224 (8th Cir. 1995).

In addition to these circuit courts, lower courts in the Second Circuit, the Third Circuit, and the District of Columbia have also held against the use of the fourth-level priority by an insurance company which provided debtors with worker's compensation coverage. *See In re Perk Development Corp., Brambury Associates*, 246 B.R. 753 (Bankr. W.D.N.Y. 2000); *In re Arrow Carrier Corp.*, 154 B.R. 642 (Bankr. D.N.J. 1993); *In re Allentown Moving & Storage*, 214 B.R. 761 (E.D.Pa. 1997); *Edward W. Minte v. Franey & Parr* (*In re Edward W. Minte Co.*), 286 B.R. 1 (Bankr. D.D.C. 2002). It therefore appears three separate circuits and other jurisdictions outside these circuits disagree with the Fourth Circuit's ruling for which this Petition seeks a review.

The leading case holding that a third-party provider of insurance to a debtor can avail itself of the fourth-level priority is *In re Saco Local Development Corp.*, 711 F.2d 441 (1st Cir. 1983), which allowed a priority claim for unpaid premiums on employee life, health, and disability insurance. The Ninth Circuit affirmed the use of the section 507(a)(4) priority by an insurance company in *Employees Ins. of Wausau v. Plaid Pantries, Inc.*, 10 F.3d 605 (9th Cir. 1993), a case involving worker's compensation insurance.

The Fourth Circuit has now joined the First and Ninth Circuits in allowing insurance companies to claim a fourth-level priority both in the instant case involving health care benefits and in *In re Howard Delivery Service, Inc.*, 403 F.3d 228 (4th Cir. 2005), involving unpaid worker's compensation premiums.

Additionally, lower courts in the Third, Fifth and Eleventh Circuits have recognized the priority status of claims by insurance companies involving various types of insurance coverage. *See In re Integrated Health Services, Inc.*, 291 B.R. 611 (Bankr. D.Del. 2003) (unpaid worker's compensation insurance premiums); *Allegheny Int'l Inc. v. Metro Life Ins. Co.*, 145 B.R. 820 (W.D.Pa. 1992) (unpaid life insurance premiums); *In re A.B.C. Fabrics of Tampa, Inc.*, 259 B.R. 759 (Bankr. M.D.Fla. 2001), (unpaid reimbursements for employee medical claims); *In re Braniff, Inc.*, 218 B.R. 628 (Bankr. M.D.Fla. 1998) (unpaid health and life insurance premiums); *Official Labor Creditors' Comm. v. Jet Fla. Systems, Inc.* (*In re Jet Fla. Systems, Inc.*), 80 B.R. 544 (S.D.Fla. 1987) (unpaid reimbursements for covered medical expenses); *Official Creditors' Comm. of Lummus Indus., Inc. v. Blue Cross & Blue Shield of Ga., Inc.* (*In re Lummus Indus., Inc.*), 193 B.R. 615 (Bankr. M.D.Ga. 1996) (unpaid health insurance premiums); *Principal Mut. Life Ins. Co. v. Joint Comm. of Unsecured Creditors* (*In re Cirrus Corp.*), 196 B.R. 76 (S.D.Tex. 1996) (unpaid health insurance premiums). It therefore

appears an evenly divided split exists between the circuits concerning the issues presented herein and serious conflict exists in the remaining circuits on the issues presented.

Even though the Petitioner urges that the correct resolution of this matter is found in the Sixth, Tenth and Eighth Circuits, there can be no argument that this split of authority needs to be resolved and, given the numerous circuits and other courts which have ruled on the issues presented, this is the appropriate time and case for the Court to accept the Petition for Writ of Certiorari.

Although the majority of cases denying an insurance company the use of the fourth-level priority have involved worker's compensation coverage, the nuances in the various analyses of the cases involving worker's compensation and other forms of insurance are of little relevance in relation to the need for the Supreme Court to resolve the split among the circuits regarding the issues presented in the instant case. Factually, whether the "Employee Benefit Plan" involves health insurance, life insurance, disability insurance, worker's compensation, or any other employee benefit should not create a material distinction. The Fourth Circuit noted in the case of which the Petitioner seeks review, "While the instant case is for unpaid health insurance premiums and fees, worker's compensation insurance is indistinguishable, under the Statute, from [health, disability, and life] insurance." *Charles M. Ivey, III v. Great-West Life & Annuity Ins. Co. (In re J.G. Furniture Group, Inc.)*, 405 F.3d 191, 193 (4th Cir. 2005) (internal citations and quotation marks omitted.).

II. THE IMPACT OF THE ISSUE PRESENTED BY THIS PETITION IS IMPORTANT AND FAR-REACHING TO NUMEROUS PERSONS AND ENTITIES.

A. Potential to Affect Entities

The serious problems with the current split of authority on this matter is that interpretation of this particular priority has a far-reaching impact on employees, insurance companies and other providers of employee benefit plans, the Internal Revenue Service, other state-related taxing authorities and providers of goods and services who have the misfortune to become a creditor in a bankruptcy proceeding. Given the current increases in both bankruptcy filings and employee benefit plans, this is an issue which is likely to appear much more often in future corporate bankruptcy cases. Because of the importance, as hereinafter discussed, of this priority and its anticipated frequency as an issue, it is imperative that this priority section be uniformly interpreted and applied so that all persons' rights will be equally protected. At this time, how affected parties' rights are protected will vary based on the location of the bankruptcy court.

B. Likelihood of Causing Forum Shopping

The overriding economic importance of the issues regarding the applicability of 11 U.S.C. § 507(a)(4) to third-party entities such as insurance providers should compel the Supreme Court to grant a writ of certiorari to resolve the split among the circuits. Economic conditions in this first decade of the new millennium have lead to a move by several very large, sometimes multinational, corporations and small corporations to avoid liability for their benefit plans. Some companies have used the bankruptcy courts to aid this process. This trend appears to be accelerating. Some of the large airlines, for example, have threatened to

use the bankruptcy process to accomplish the elimination of employee benefit plans. Unclear and non-uniform determination of the 11 U.S.C. § 507(a)(4) priority for the claims of third-parties could lead to forum shopping by potential bankruptcy filers.

The applicability of the fourth-level priority may be an important consideration in where to file in both reorganizations under Chapter 11 and liquidations under Chapter 7. In a case under Chapter 11, the priority claims must be paid for in full for a plan of reorganization to be confirmed according to 11 U.S.C. § 1129. In a case under Chapter 7, the policy to equally treat unsecured creditors by paying the maximum dividend on their allowed claims would be thwarted by the erosion of part or all funds available made necessary by placing certain priority claims in line for full payment before distribution of any remaining funds to unsecured creditors. It follows that it would be advantageous in many circumstances to file for reorganization under Chapter 11 or for liquidation under Chapter 7 in a jurisdiction which does not allow the use of the fourth-level priority by third-party providers of insurance coverage to a debtor. Where to file should not be impacted by whether it is more or less advantageous for third-party insurers to have an 11 U.S.C. § 507(a)(4) priority.

C. Major and Uneven Economic Impact on Commerce

Bankruptcy cases in which only limited funds will be available for creditors to receive minimal distribution on their claim have a major economic impact on commerce. Given the current split among the circuits, some creditors, such as those in the Fourth Circuit, will receive decreased or no distribution where third-party insurers are allowed a 507(a)(4) priority. In other circuits, where the third-party insurers are not allowed the fourth-level priority, creditors

will receive more. The equal treatment of creditors nationally is critical if the integrity of the bankruptcy system is to be maintained. The current confused status concerning employee benefit plans prevents this desired equal treatment.

Most tax debt obligations receive a priority. This priority is junior to the employee benefit plan priority under 11 U.S.C. § 507(a)(4). In bankruptcy cases where limited funds prevent all priority claims from being paid in full, the taxing authorities, including the Internal Revenue Service, can expect to receive less distribution in circuits such as the Fourth Circuit because third-party insurance creditors claiming an employee benefit plan priority will be paid first. The taxing authorities would receive more in those circuits which have ruled contrary to the Fourth Circuit. Even worse, certain states, counties and municipalities with a § 507(a)(8) priority tax claim who do not collect nationally are currently receiving the advantage or disadvantage of the interpretation of 11 U.S.C. § 507(a)(4) of the circuit based solely on where they happen to be located. When the economic impact of this issue is viewed in the isolation of one case, such as in this case where only $27,773.51 is claimed as a fourth-level priority, the impact may be minimal. But when the economic impact is correctly viewed in the aggregate of all affected cases, the impact is substantial. Additional priority creditors who are junior to the employee benefit plan priority are also receiving unequal treatment. Child support claims pursuant to 11 U.S.C. § 507(a)(7) are subordinate to third-party insurance companies claiming a section 507(a)(4) priority in some courts but not in others.

This Petitioner does not agree with the rationale of *In re Saco Local Development Corp.*, 711 F.2d 441 (1st Cir. 1983). This decision appears to imply that the allowance of a 507(a)(4) priority to a third-party insurance carrier would

encourage insurance companies to provide benefit plans. If this rationale is correct, then it must follow that the failure to recognize the priority discourages such coverage. If that is true, then the current split in authority is encouraging the business of providing employee benefit plans in certain circuits and is discouraging the business of providing employee benefit plans in others. The Bankruptcy Code was never intended to bring about that kind of result. A ruling on the issue is necessary to bring about a consistent interpretation and therefore prevent this unintended and undesired result.

III. THERE IS A NEED TO PREVENT AN IMPERMISSIBLE EXPANSIVE READING OF THE PRIORITIES OF THE BANKRUPTCY CODE.

The Trustee respectfully believes that the better reasoned cases are those limiting the use of the fourth-level priority. It is the contention of the Trustee that the Fourth Circuit erred in ruling that Great West should be allowed to have a priority claim under 11 U.S.C. § 507(a)(4). Allowing a priority claim to Great West under section 507(a)(4) constitutes an impermissibly expansive reading of section 507(a)(4). This expansive reading would directly contradict the United States Supreme Court's express directive in *Hartford Underwriters Insurance Co. v. Union Planters Bank*, 530 U.S. 1, 120 S. Ct. 1942, 147 L. Ed. 2d 1 (2000), that the priorities of the Bankruptcy Code should be narrowly construed. Additionally, no employees of J.G. Furniture rendered any services to the company within 180 days of the petition, as required by section 507(a)(4). The priorities of the Bankruptcy Code must be narrowly construed in order to favor an even distribution among similarly situated creditors of a debtor.

Great West is not entitled to a priority claim under the plain meaning of 11 U.S.C. § 507(a)(4) for administration fees, premiums, and payment of claims for medical

expenses of former employees of J.G. Furniture who did not perform services for the Debtor within 180 days of the petition date. A section 507(a)(4) priority claim should not be available to outside entities such as insurance companies who conduct a business for profit and merely provide credit to a Debtor pursuant to contractual obligations. It is congress who should decide whether insurance companies such as Great West should be paid before consumer deposit creditors, creditors with child support, alimony or other domestic-related debt, and applicable taxing authorities. 11 U.S.C. § 507(a). The relationship of Great West with the Debtor is the same as that of other general unsecured creditors who provided other goods and services to the Debtor and Great West should not be entitled to a priority advantage over other creditors and the estate. This Court should therefore grant this Writ of Certiorari to prevent an inappropriate expansive interpretation of 11 U.S.C. § 507(a)(4) and not allow a third-party insurance company to be interpreted to be an employee and thereby allow a debtor-creditor relationship created by contract to be substituted into the place of an employee benefit plan, especially since the fact that the plan is between the insured employees and the employer-provider.

CONCLUSION

The facts presented by this appeal place squarely before this Court the opportunity to resolve a major conflict concerning whether an insurance company who has contracted with an employer and thereby created between the employer and insurance company certain obligations which then allow the employer to offer its employees an employee benefit plan can obtain an allowed 11 U.S.C. § 507(a)(4) priority claim. It is the Petitioner's position that this priority should be available only to employees and only if covered services were performed by the employee. The Fourth Circuit disagrees. Given the substantial conflicts

between circuits in interpreting this priority Bankruptcy Code section, numerous individuals', corporations' and governmental entities' rights vary solely based on their current geographical location. The Bankruptcy Code properly seeks and needs a consistent, national interpretation. It is therefore proper and appropriate for the Court to accept this Writ of Certiorari so the confusion is removed and all persons appearing in Bankruptcy Court will have their rights equally protected.

For the foregoing reasons, the Petitioner submits that this Court should grant review in this case to reverse the holding of the United States Court of Appeals for the Fourth Circuit.

Respectfully submitted,

Charles M. Ivey, III
Counsel of Record
NCSB# 8333
John M. Blust
IVEY McCLELLAN,
GATTON & TALCOTT, L.L.P.
121 South Elm Street
Post Office Box 3324
Greensboro, North Carolina 27402
(336) 274-4658

Counsel for Petitioner

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PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-1576

In Re: J.G. FURNITURE GROUP, INCORPORATED, d/b/a J.G./The Apollo Group, Incorporated, d/b/a Alma Furniture Group, Incorporated, d/b/a J.G./Alma,

Debtor.

CHARLES M. IVEY, III, Trustee for the bankruptcy estate of J.G. Furniture Group, Incorporated,

Trustee-Appellant,

v.

GREAT-WEST LIFE & ANNUITY INSURANCE COMPANY,

Claimant-Appellee,

and

TRIAD FABRICATIONS AND MACHINE; PIFER INDUSTRIES, INCORPORATED; TRIANGLE MACHINE AND ELECTRONIC COMPANY,

Creditors.

AMERICAN HOME ASSURANCE COMPANY; THE TRAVELERS INDEMNITY COMPANY, and its affiliates; ZURICH AMERICAN INSURANCE COMPANY,

Amici Supporting Appellee.

Appeal from the United States District Court
for the Middle District of North Carolina, at Durham.
N. Carlton Tilley, Jr., Chief District Judge.
(CA-02-586-1; BK-98-10900)

Argued: February 3, 2005

Decided: April 20, 2005

Before LUTTIG and MOTZ, Circuit Judges,
and Samuel G. WILSON, United States District Judge
for the Western District of Virginia,
sitting by designation.

Affirmed by published opinion. Judge Luttig wrote the opinion, in which Judge Motz joined. Judge Wilson wrote a concurring opinion.

COUNSEL

ARGUED: Charles M. Ivey, III, IVEY, MCCLELLAN, GATTON & TALCOTT, L.L.P., Greensboro, North Carolina, for Appellant. David Marion Warren, POYNER & SPRUILL, Rocky Mount, North Carolina, for Appellee. G. Eric Brunstad, Jr., BINGHAM MCCUTCHEN, L.L.P., Hartford, Connecticut, for Amici Curiae Supporting Appellee.
ON BRIEF: John M. Blust, IVEY, MCCLELLAN, GATTON & TALCOTT, L.L.P., Greensboro, North Carolina, for Appellant. Deborah E. Sperati, POYNER & SPRUILL, Rocky Mount, North Carolina, for Appellee. Margaret M. Anderson, Hugh S. Balsam, LORD, BISSELL & BROOK, L.L.P., Chicago, Illinois, for Amici Curiae Supporting Appellee.

OPINION

LUTTIG, Circuit Judge:

Appellant-trustee Charles M. Ivey III appeals the district court's determination that claimaint-appellee Great West Life & Annuity Insurance Company's claim against debtor J.G. Furniture Group, Inc. was entitled to priority

status under 11 U.S.C. § 507(a)(4). For the reasons set forth below, we affirm the judgment of the district court.

I.

The facts in this case are undisputed. In 1996, J.G. Furniture entered into a contract with Great West, whereby Great West agreed to administer J.G. Furniture's self-funded employee benefit plan. J.A. 88-89. Under the terms of the agreement, J.G. Furniture's employees submitted their medical bills to Great West for payment, Great West then evaluated and paid the claims, and J.G. Furniture reimbursed Great West by permitting Great West to withdraw funds from an account set up by J.G. Furniture. J.A. 9, 89. In exchange for these services, J.G. Furniture paid Great West administrative fees.

In addition, in order to cap its potential liability, J.G. Furniture purchased "stop-loss" coverage from Great West. Under this coverage, Great West "could only be reimbursed for claims paid up to [J.G. Furniture's] maximum liability amount." J.A. 89. J.G. Furniture paid Great West a monthly premium for the stop-loss coverage.

In July of 1997, J.G. Furniture closed its Pennsylvania operations, moving all of its production activities to North Carolina. The Pennsylvania employees lost their jobs, but many of them "completed COBRA forms and sent payments to the Debtor in order to continue coverage" under J.G. Furniture's medical benefits plan administered by Great West. J.A. 89. On April 7, 1998, J.G. Furniture filed a voluntary petition under Chapter 7 of the United States Bankruptcy Code. Great West filed a claim for a combination of unpaid administrative fees, unpaid premiums, and unpaid medical claims, totaling $27,773.51. Notably, in the 180 days preceding J.G. Furniture's bankruptcy, only J.G. Furniture's former employees were insured

through Great West. Great West successfully sought priority status for its claim pursuant to 11 U.S.C. § 507(a)(4) in the bankruptcy court. The district court affirmed and the instant appeal followed.

II.

Section 507(a)(4) affords "priority" to "unsecured *claims for contributions to an employee benefit plan . . . arising from services rendered* within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first." 11 U.S.C. § 507(a)(4)&(A) (emphasis added) (internal divisions omitted). When the trustee brought this appeal, we had not addressed whether an insurance company could obtain priority under section 507(a)(4) for claims for unpaid premiums and fees, pertaining to an employee benefit plan, owed by a debtor-employer. In the interim, however, we decided *Howard Delivery Service, Inc. v. Zurich American Ins. Co.*, ___ F.3d ___, 2005 WL 674869 (4th Cir. 2005), where we held that an insurer was entitled to section 507(a)(4) priority status for unpaid worker's compensation insurance premiums owed by a debtor-employer. *Howard Delivery* held that worker's compensation plans fall within the meaning of "employee benefit plan," and that an employer's payment of insurance premiums constitutes a "contribution." While the instant case is for unpaid health insurance premiums and fees, "worker's compensation insurance is indistinguishable, under the Statute, from [health, disability, and life] insurance." *Id.* at *8 (King, J., concurring). Accordingly, under *Howard Delivery*, Great West is entitled to priority status for its claim against J.G. Furniture.

Appellant, however, raises a contention that was not addressed in *Howard Delivery*, namely that section 507(a)(4) is inapplicable here because the individuals insured through Great West were not employed by J.G. Furniture in the 180-

day period preceding the bankruptcy filing, and thus, appellant claims, J.G. Furniture's obligation did not arise from "services rendered" in that time frame. We disagree with appellant's contention that the relevant services were those rendered (or not) by J.G. Furniture's employees. Under section 507(a)(4), priority is afforded "claims . . . arising from services rendered within 180 days before the date of the filing of the petition." At a minimum, this language contemplates that such a claim can – and perhaps must – arise *from services rendered by the claimant*, namely the creditor seeking priority status. Here, the creditor, Great West, provided health insurance coverage and administered J.G. Furniture's plan during the statutory time period. As the district court determined, the performance of these services entitled Great West to priority under the statute. *See* J.A. at 100 ("Insurers providing health coverage are rendering services, and the claims for contributions arise from these services.").

CONCLUSION

For the foregoing reasons, the judgment of the district court is affirmed.

AFFIRMED

WILSON, District Judge, concurring:

I concur in the court's judgment, and I concur in the court's opinion that under *Howard Delivery*, Great West is entitled to priority status for its claim against J.G. Furniture. However, while I reject appellant's argument that J.G. Furniture's obligation did not arise from "services rendered" within 180 days of the bankruptcy filing because J.G. Furniture had no employees during that time period, I do not reject this argument on its underlying merits. Rather, I reject the argument because I believe that *Howard Delivery*'s,

reasoning that the "services rendered" language of § 507(a)(4) contemplates services rendered either by an employee or by an insurance company precludes it.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

[ENTERED: March 31, 2004]

IN RE: CHARLES M. IVEY, III, TRUSTEE, Plaintiff-Appellant, v. GREAT WEST LIFE & ANNUITY INSURANCE CO., Defendant-Appellee.	)	1:02CV586

MEMORANDUM OPINION

TILLEY, Chief Judge

This matter is before the Court on appeal from the United States Bankruptcy Court for the Middle District of North Carolina. Charles M. Ivey, Trustee for the bankruptcy estate of J.G. Furniture Group, Inc., appeals the final decision of the Bankruptcy Court allowing the claim of Great West Life & Annuity Insurance Company. For the reasons set forth below, Great West's priority claim should be allowed and the decision of the Bankruptcy Court will be AFFIRMED.

I.

The undisputed facts are as follows: J.G. Furniture Group, Inc. ("the Debtor") operated a factory in Pennsylvania until July of 1997. On April 28, 1996, the

Debtor entered into a self-funded Services Contract with Great West Life & Annuity Insurance Company ("Great West") to administer an employee medical benefits plan. Under the terms of the contract, the Debtor's employees submitted their medical bills to Great West for payment and Great West evaluated and paid the claims on behalf of the plan. The Debtor reimbursed claims payments made by Great West by permitting Great West to withdraw money from a special bank account set up by the Debtor. In exchange for these services, the Debtor paid Great West administrative fees.

In order to limit its potential claims liability, the Debtor also elected to purchase "stop-loss" coverage from Great West. In essence, this coverage limited the maximum claims liability that the Debtor could incur from the self-funded benefits plan. Great West could only be reimbursed for claims paid up to the Debtor's maximum liability amount. The Debtor calculated and submitted its own estimated premiums for this coverage each month. Great West reviewed and corrected the premium estimates as needed and the Debtor either received a credit for overpayment or was responsible for paying any deficiency.

In July of 1997, the Debtor closed its factory in Pennsylvania and moved all production activities to High Point, North Carolina. Accordingly, most of the Pennsylvania factory employees were left without employment as of the first week of August, 1997. Although no longer working for the Debtor, the former Pennsylvania employees were invited to continue to participate in the Debtor's medical benefit plan. Many of the former employees completed COBRA forms and sent payments to the Debtor in order to continue coverage under the plan.

On or about March 3, 1998, the Debtor stopped making its contractually obligated premium payments to

Great West. As a result, Great West discontinued payments on the former employees' medical claims after April 2, 1998. On April 7, 1998, the Debtor filed a voluntary petition under Chapter 7 of the United States Bankruptcy Code. Charles M. Ivey was appointed as Trustee.

On July 2, 1998, Great West filed a claim in the bankruptcy proceeding in the amount of $27,773.51.[1] The costs cover the period from February 17, 1998 through April 2, 1998 and reflect a combination of unpaid administrative fees, unpaid premiums, and medical claims which were paid on behalf of the Debtor's former employees but not reimbursed.

Great West brought its claim as a priority claim for contributions to an employee benefit plan under 11 U.S.C. § 507(a)(4). The Trustee filed an objection to the claim, arguing that Great West is not entitled to assert priority under § 507(a)(4). The Bankruptcy Court held that Great West did have a priority claim for contributions, citing this Court's decision in Aetna Life Ins. Co. v. The Montaldo Corp., 232 B.R. 853 (M.D.N.C. 1997). The Trustee filed notice of appeal. Oral arguments in this matter were held on January 30, 2003.

II.

Bankruptcy law details various expenses and claims which should be given priority in settling bankruptcy estates. See 11 U.S.C. § 507. The priority statute sets out these claims in order of decreasing priority. The parties to this dispute disagree over the application of the fourth priority, priority for contributions to an employee benefit plan. The provision in dispute is as follows:

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[1]Proof of Claim No. 245.

(4) Fourth, allowed unsecured claims for contributions to an employee benefit plan -

(A) arising from services rendered within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first; but only

(B) for each such plan, to the extent of --

(i) the number of employees covered by each such plan multiplied by $4,650[2]; less

(ii) the aggregate amount paid to such employees under paragraph (3) of this subsection,[3] plus the aggregate amount paid by the estate on behalf of such employees to any other employee benefit plan.

11 U.S.C. § 507(a)(4).

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[2]This amount was recently adjusted upwards from the $4,000 cited by the parties.

[3]Paragraph 3 of 11 U.S.C. § 507(a) addresses the priority of employees for wages earned prior to bankruptcy and will be discussed in more detail below.

The Trustee bases his argument that Great West is not entitled to priority under § 507(a)(4) on two grounds: (1) that an insurance company is not among the persons entitled to priority under the statute, and (2) that the priority does not apply where the Debtor's former employees did not work for the Debtor within the 180-day period prior to the filing of the bankruptcy petition. A determination of these issues requires a close examination of § 507(a)(4).

A.

Statutory interpretation must, of necessity, begin with the language of the statute itself. If the statutory language is unambiguous and "the statutory scheme is coherent and consistent," the Court need not look further for evidence of Congressional intent. Johnson v. MBNA Am. Bank. NA, 357 F.3d 426 (4th Cir. 2003) (citing Robinson v. Shell Oil Co., 519 U.S. 337, 340 (1997)). When examining statutory language, words should be given their ordinary, contemporary, and common meaning.[4] Scott v. U.S., 328 F.3d 132, 139 (4th Cir. 2003). All words in a statute should be given effect and none should be disregarded as mere surplusage. Id.

Whether language is ambiguous is determined not only by reference to the language itself, but by the "specific context in which that language is used, and the broader context of the statute as a whole." Johnson, 357 F.3d 426 (citing Robinson, 519 U.S. at 341). For example, the principle

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[4]There are two narrow exceptions to the rule that a statute should be given its plain meaning. Holland v. Big River Minerals Corp., 181 F.3d 597, 603 n.2 (4th Cir. 1999). The first exception applies when literal application of the statutory language produces an outcome that is demonstrably at odds with clearly expressed congressional intent. The second exception applies when literal application of the statutory language results in an outcome that can truly be characterized as absurd. Id.

of ejusdem generis provides that a general statutory term should be understood in light of specific terms that surround it. U.S. v. Parker, 30 F.3d 542, 553 n.10 (4th Cir. 1994). Courts may consider the arrangement of the words in light of the rules of grammar. Miller's Apple Valley Chevrolet Olds-Geo, Inc. v. Goodwin, 177 F.3d 232, 234 (4th Cir. 1999). A court construing a statute presumes that the statute is not self-contradictory or otherwise irrational. Salomon Forex, Inc. v. Tauber, 8 F.3d 966, 975 (4th Cir. 1993).

B.

The Trustee's first ground for appeal stems from his contention that insurance companies are not among the entities entitled to priority under 11 U.S.C. § 507(a)(4). Courts have disagreed as to what persons are entitled to priority under this statute. See e.g., In re Saco Local Dev. Corp., 711 F.2d 441 (1st Cir. 1983) (finding that insurers are entitled to priority); In re Edward W. Minte Co., Inc., 286 B.R. 1 (Bank. D. Col. 2002) (finding that insurers are not entitled to priority). This Court has previously agreed with cases finding that insurance companies are entitled to assert priority for contributions to employee benefit plans. Aetna Life Ins. Co. v. The Montaldo Corp., 232 B.R. 853 (M.D.N.C. 1997). In light of the continuing legal debate over this issue, this Court will revisit its reading of the statute.

The Trustee argues that the priority given to "claims for contributions to an employee benefit plan" only applies to claims made by employees. The Trustee's support for this interpretation is, in part, that bankruptcy priority provisions are to be narrowly construed. See Ford Motor Credit Co. v. Dobbins, 35 F.3d 860, 865 (4th Cir. 1994). However, the statute does not explicitly limit priority to employee contributions. Instead, the statute gives priority to "claims for contributions" to the benefit plan "arising from services

rendered within 180 days." This statutory language, at least in isolation, appears to allow priority for insurers or any other parties who make contributions to the plan.

1.

In order to determine whether Congress intended to allow priority for insurers, the language of the benefit plan priority must be examined both in isolation and in the context of the larger priority statute. If the plain language of the statute is unambiguous and would permit priority for insurers, this Court need not look further for evidence of Congressional intent.

The specific language of 11 U.S.C. § 507(a)(4) gives priority to claims for contributions to an employee benefit plan. The word "contribute" is defined as: (1) "to give a part to a common fund or store" or (2) "to play a significant part in bringing about an end or result." Webster's Ninth New Collegiate Dictionary (Merriam-Webster, Inc. 1987). An insurance company that administers an employee benefit plan and pays all medical claims out of its own funds until reimbursed appears to play a significant part in that benefit plan. Accordingly, the plain language of the statute appears to include priority for an insurance company which has expended its own funds to make the plan work.

Further support for giving priority to such insurers can be found by comparing the language in § 507(a)(4) to other language in the priority statute. The priority given to employees for a portion of their wages is set out in the paragraph above the benefit plan priority. 11 U.S.C. § 507(a)(3). This priority applies to "wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual."[5] Id. (emphasis added). In

[5]The priority also applies to corporations with only one employee.

contrast, the employee benefit plan priority applies to "contributions to an employee benefit plan . . . arising from services rendered." When Congress includes language in one section of a statute, but excludes it from another section, the disparity is presumed to be intentional. De Osorio v. I.N.S., 10 F.3d 1034, 1041 (4th Cir. 1993). If Congress had intended the benefit plan priority to apply only to individuals or employees, it could have phrased this priority as specifically as it did the wage priority.

2.

The Trustee concedes that the language in § 507(a)(4) does not explicitly limit priority to employees. However, he argues that the rules of statutory construction require § 507(a)(4) to be read in context, and that the statutory context demonstrates Congressional intent to limit the priority. As support for this argument, the Trustee points to the relationship between § 507(a)(4) and the employee wages priority provision in § 507(a)(3). A party may only receive priority for contributions to an employee benefit plan up to a statutory maximum. This statutory cap is defined in such a way that the amount of priority available for contributions to an employee benefit plan is explicitly dependent on the amount of priority which has been claimed by employees for unpaid wages under § 507(a)(3). In essence, if each of a Debtor's employees has asserted priority for employee wages up to the maximum amount allowed by statute, the priority for contributions to an employee benefit plan is no longer available. Because only employees may claim wage priority under § 507(a)(3), and because the amount of employee wage priority claimed affects the available amount of employee benefit plan priority, the Trustee contends that Congress intended the employee benefit plan priority to be limited to employees.

Because statutory language must be considered as a whole, and not in isolation, examination of the relationship between the employee wage priority and the employee benefit plan priority is appropriate. The fact that the employee benefit plan priority directly follows the employee wage priority, and makes specific reference to the wage priority, leads to a reasonable interpretation that the two priorities are related. In addition, language limiting the maximum amount of priority available for employee benefit plan contributions by the amount of employee wage priority claimed does create a reasonable interpretation that the benefit plan priority was intended as an additional protection for employees.

Evidence of Congressional intent to provide protection for employees, however, does not necessarily provide evidence of an intent to limit priority to individual employees. Providing priority to claims made by insurance companies in the business of providing health coverage for employees is also consistent with a Congressional intent to protect employee health benefits. An insurance company that continues to provide health benefits to employees during an employer's periods of financial difficulty is protecting employees who stay with the employer. Were insurance companies to not receive priority in bankruptcy, continued health benefits may not be available to the employees of struggling businesses. That the amount may be capped by amounts entitled to priority under § 507(a)(3) does not suggest that only employees are entitled to priority under § 507(a)(4) but that Congress determined to limit, in an objective manner, the total amount entitled to priority under § 507(a)(4).

3.

Because the plain language of the priority statute is unambiguous and does not exclude insurers, this Court

need not look beyond the text of the statute to the legislative history for evidence of Congressional intent. Stiltner v. Beretta U.S.A. Corp., 74 F.3d 1473, 1482 (4th Cir. 1996). However, it is worth noting that the legislative history behind § 507(a)(4) also does not demonstrate a Congressional intent to exclude priority for insurers.

The House Report addressed the employee benefit plan priority and the employee wage priority together in a section entitled "Wages and Fringe Benefits." The report noted that the purpose behind giving priority to employees in bankruptcy is to help rehabilitate the company by "ensur[ing] that employees will not abandon a failing business for fear of not being paid." H.R. Rep. No. 95-595 at 187 (1977), reprinted in 1978 U.S.C.C.A.N. 5963, 6148. The report went on to explain that failing to recognize fringe benefits as part of an employee's bargained-for wages "does a severe disservice to those working for a failing enterprise." Id. The report noted that additional time was given for calculating the priority of both wages and benefit plans in order to "provide additional protection to the employees of a bankrupt enterprise." Id.

The Senate Report also supports a finding that Congress intended the employee benefit plan priority as a protection for employees. The report explained that the priority for employee benefit plans was created in order to overrule two Supreme Court decisions "which held that fringe benefits were not entitled to wage priority status." S. Rep. No. 95-989 at 69 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 5855. Like the House Report, the Senate Report recognizes that fringe benefits may be negotiated along with wage demands and are entitled to similar priority. Id.

The legislative history behind 11 U.S.C. § 507(a)(4) demonstrates a clear Congressional intent to protect employees who stay with a failing company. However,

there is no clear intent to limit bankruptcy claim priority to individual employees. The purpose of granting priority to employee wages and to employee benefit plan contributions was to encourage and reward employees who remain with an employer during difficult financial times at risk of losing their wages and financial benefits. Protecting insurers who continue to provide health benefits for a debtor's employees during difficult financial times protects the employees receiving these benefits. In turn, employees are more likely to stay with their struggling employer when the employer ensures that employee medical claims are paid.

After full reconsideration of 11 U.S.C. § 507(a)(4), this Court finds that insurers are among the class of persons intended to receive priority for contributions to employee benefit plans. The statute does not specifically limit its application to employees, and the language of the statute read in context does not create an ambiguity. While examination of the legislative history is unnecessary, it indicates nothing more than a Congressional intent to protect employees. Therefore, this Court reaffirms its earlier decision in Aetna Life Ins. Co. v. The Montaldo Corp., 232 B.R. 853 (M.D.N.C. 1997). The Bankruptcy Court's decision granting Great West's priority, in reliance on Aetna, will be AFFIRMED.

C.

The Trustee argues that, even in the event this Court reads 11 U.S.C. § 507(a)(4) to include priority for insurers, Great West's claim still should be denied under the unique facts of this case. Because the Debtor's former employees did not render any services to the Debtor in the 180 days preceding the filing of the bankruptcy petition, the Trustee argues that priority can not be granted. However, because this Court finds that priority under 11 U.S.C. § 507(a)(4) is

not limited to contributions related to services provided by employees, Great West is entitled to priority.

The Trustee bases his argument on the language of § 507(a)(4) which grants priority "for contributions to an employee benefit plan - arising from services rendered within 180 days before the date of the filing of the petition. . . ." Providing essentially the same contextual arguments set out in Section B, the Trustee argues that this statutory language only refers to services rendered by employees. Because the insurance claims involved in this dispute are based on medical coverage for former employees, the Trustee argues that the claims are not within the priority statute.

As discussed above, issues of statutory interpretation begin with an examination of the plain language of the statute. Just as the plain language of the statute does not limit priority to individual employees, it also does not limit priority on the basis of whether an individual employee has provided services to the debtor. The failure of the statute to include language limiting priority to services provided by individual employees, in the way the statute specifically limits priority for employee wages to those "earned by an individual," is of great significance. Instead of limiting the priority to contributions for services rendered "by an individual," the statute simply permits priority for contributions arising from services rendered. Insurers providing health coverage are rendering services, and the claims for contributions arise from these services. See e.g., In re ABC Fabrics of Tampa, Inc., 259 B.R. 759 (Bankr. M.D. Fla. 2001); In re Maxwell Newspapers, Inc., 192 B.R. 633 (Bankr. S.D.N.Y. 1996). But see In re AER-Aerotron, Inc., 182 B.R. 725, 727 (Bankr. E.D.N.C. 1995) (finding that claim for unpaid insurance premium did not arise from a "service").

III.

For the reasons stated above, Great West is entitled to priority for contributions to an employee benefit plan under 11 U.S.C. § 507(a)(4). In light of the unambiguous plain language of the statute, this Court reaffirms its earlier decision in Aetna Life Ins. Co. v. The Montaldo Corp., 232 B.R. 853 (M.D.N.C. 1997). Accordingly, the decision of the Bankruptcy Court granting Great West's priority in reliance on Aetna will be AFFIRMED.

This the [31st] day of March, 2004.

/s/ N. CARLTON TILLEY, JR.
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

[ENTERED: March 31, 2004]

IN RE: CHARLES M. IVEY, III, TRUSTEE, Plaintiff-Appellant, v. GREAT WEST LIFE & ANNUITY INSURANCE CO., Defendant-Appellee.	)	1:02CV586

ORDER

This matter is before the Court on appeal from the United States Bankruptcy Court for the Middle District of North Carolina. Charles M. Ivey, Trustee for the bankruptcy estate of J.G. Furniture Group, Inc., appeals the final decision of the Bankruptcy Court allowing the claim of Great West Life & Annuity Insurance Company. For the reasons set forth in a contemporaneously filed Memorandum Opinion, Great West's priority claim should be allowed and the decision of the Bankruptcy Court will be AFFIRMED.

This the [31st] day of March, 2004.

/s/ N. CARLTON TILLEY, JR.
United States District Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

[ENTERED: April 11, 2002]

IN RE:	)	
	)	
J. G. FURNITURE GROUP, INC.	)	CASE NO.
	)	98-10900C-7G
Debtor.	)	

ORDER ALLOWING CLAIM OF GREAT-WEST
LIFE & ANNUITY INSURANCE COMPANY

This case is before the court for determination of the Amended Trustee's Objection to Allowance of Claim ("Objection") filed December 31, 2001 and the Response thereto filed February 8, 2002 by Great-West Life & Annuity Insurance Company ("Great-West"). Hearings on the Objection and the Response were held on February 20, 2002 and March 19, 2002. The Trustee, Charles M. Ivey, III, was represented by John M. Blust and Great-West was represented by David M. Warren. After considering the evidence presented and the arguments of counsel, the court makes the following findings of fact and conclusions of law:

1. This matter is a core proceeding pursuant to 28 U.S.C. § 157, and the court has jurisdiction pursuant to 28 U.S.C. §§ 151, 157, and 1334. The court has the authority to hear this matter pursuant to the General Order of Reference entered August 15, 1984, by the United States District Court for the Middle District of North Carolina.

2. The Debtor filed a Chapter 7 bankruptcy petition on April 7, 1998, and the Trustee Charles M. Ivey,

III, was appointed to fulfill the duties contained in 11 U.S.C. § 704.

3. Great-West and the Debtor entered into a written contract for the establishment and maintenance of the Debtor's self-funded employee benefits plan ("Plan" or "Contract"). The Debtor submitted to Great-West an Application for Group Coverage ("Application"), and Great-West accepted the Application. Both parties agreed that the Plan would have an effective date of April 28, 1996. The terms of the Plan are set forth in the Contract, consisting, in part, of the Services Contract and the Stop-Loss Contract. These documents are attached to the Proof of Claim previously filed with the court by Great-West.

4. By choosing to self-fund its employee benefits, the Debtor accepted primary financial responsibility for the medical claims paid under this Contract. In order to limit its potential claims liability, the Debtor also elected "stop-loss" coverage in return for a monthly premium payment to Great-West. Stop-loss coverage essentially establishes monthly and cumulative "attachment" levels, which set the maximum claims liability that the Debtor incurs in connection with the self-funded benefits. In addition, the Debtor made monthly premium payments for certain fully insured portions of the Contract.

5. Under the Contract, providers of health care services to employees of the Debtor sent claims directly to Great-West, which processed and paid those claims in accordance with the Plan. Great-West was then entitled to reimbursement up to the Debtor's attachment level for all amounts paid on behalf of the Debtor. The Contract required the Debtor to maintain sufficient funds in a bank account from which Great-West was authorized to initiate wire transfers of the reimbursement amount due. Pursuant to the Contract, the Debtor calculated and submitted its own

estimated premiums each month, which subsequently were reviewed and corrected by Great-West. The Debtor was responsible for paying any deficiency or receiving a credit for any overpayment.

6. The majority of the employees of the Debtor insured under the Contract were employed at the Quakertown, Pennsylvania plant. This plant eventually closed, and worker layoffs began on or about August 8, 1997. Pursuant to an agreement dated August 4, 1997 between the Debtor and the United Steelworkers of America, AFL-CIO, District 10, Local 162U, the Debtor agreed to continue to provide to the discharged employees the benefits under the Contract, notwithstanding the layoffs.

7. During the 180 days prior to the petition date, no employees covered under the Contract and for whom Great-West has paid claims during such 180 days were working for the Debtor, as those employees were the subject of the August 8, 1997 layoffs. However, from April 28, 1996 through March 3, 1998, the Plan was actively in place, with Great-West processing and paying claims on behalf of the Debtor, and the Debtor reimbursing Great-West up to its monthly or cumulative attachment level.

8. On March 3, 1998, a wire transfer was initiated by Great-West as reimbursement for claims paid on the Debtor's behalf between February 17 and 27, 1998. Great-West was notified that the transfer was unsuccessful because Debtor did not have sufficient funds on deposit, which constituted a breach of the Contract. Great-West continued to pay claims in March and early April, after the failed transfer, and the Debtor is also liable for those amounts.

9. A total balance is due to Great-West in the amount of $27,773.51 as follows:

February 17-27, 1998 paid claims	$ 1,510.28
March administrative fees and premium	4,334.55
March 1998 claims transfer[1]	21,005.02
April 2, 1998 paid claims	923.66
Total priority claim	$ 27,773.51

10. The Trustee objects to Great-West's claim on the grounds that the employees for whom benefits and premiums were paid did not render services within 180 days prior to the petition date and on the grounds that Great-West seeks priority status through subrogation to the rights of those workers who received the benefits under the Contract.

11. Great-West seeks a priority claim in its own right in the amount of $27,773.51 for reimbursement for claims processed on the Debtor's behalf between February 17 and April 2, 1998, and does not seek the priority claim through subrogation.

12. Pursuant to its contract, Great-West was performing a benefit to the Debtor and its employees when it issued the checks to pay for medical services. Great-West had direct contractual responsibility to make such payments regardless of whether the employee was rendering services to the Debtor through employment. The date that Great-West issued the checks to pay for claims submitted by Plan participants is the date of the contribution to the employee benefit plan for purposes of § 507(a)(4). The Debtor also owes Great-West administrative fees and premiums for services performed during the month of March, 1998.

13. Pursuant to § 507(a)(4), contributions to an employee benefit plan within 180 days prior to the filing of

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[1]The claims transfer is the failed transfer from the Debtor's escrow account for the reimbursement of the claims paid by Great-West.

the petition are entitled to priority. The Debtor filed its petition on April 7, 1998; therefore the 180-day period started on October 10, 1997. All amounts claimed by Great-West were paid or incurred by Great-West during this period. This court previously ruled that unpaid insurance premiums do not qualify as a contribution to an employee benefit plan; however, in *Aetna Life Ins. Co. v. The Montaldo Corp.* (*In re The Montaldo Corp.*), 232 B.R. 853 (D. M.D. N.C. 1997), the district court reversed such ruling and held that insurance premiums for a health insurance plan that are incurred but unpaid during the 180 days prior to the bankruptcy filing are entitled to priority under 11 U.S.C. § 507(a)(4). Consistent with the decision of the district court, administrative fees and claims reimbursements of an insurer of an employee health insurance plan that become due within 180 days prior to the filing of the petition likewise are entitled to priority status. The amounts that the Debtor is obligated to pay to Great-West are contributions to an employee benefit plan under the decision of the district court, which entitles such amounts to priority treatment. Following the law as established in this district, all claims reimbursement due from the Debtor for October 10, 1997 through April 7, 1998 are entitled to priority treatment. As a result, Great-West is entitled to a priority claim for all amounts claimed, totaling $27,773.51.

It is therefore ORDERED, ADJUDGED AND DECREED as follows:

1. The Trustee's Objection be, and hereby is denied;

2. Great-West is allowed an unsecured priority claim in the amount of $27,773.51 pursuant to 11 U.S.C. § 507(a)(4); and

3. The Trustee shall make such distribution from the Debtor's bankruptcy estate.

This 10th day of April, 2002.

/s/ WILLIAM L. STOCKS
WILLIAM L. STOCKS
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

[ENTERED: April 11, 2002]

IN RE: CASE NO. 98-10900C-7G

J. G. FURNITURE GROUP, INC.

DEBTOR CHAPTER 7

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on the below date, the undersigned Clerk served a copy of the Order Allowing Claim of Great-West Life & Annuity Insurance Company filed by West Life & Annuity Insurance Company by depositing the same, enclosed in a postpaid wrapper, properly addressed to the following parties in interest, at their last known addresses as shown below, in a post office or official depository under the exclusive care and custody of the United States Postal Service:

John M. Blust, Esq.
Post Office Box 3324
Greensboro, NC 27402

David M. Warren, Esq.
P.O. Box 353
Rocky Mount, NC 27802-0353

Michael D. West, Esq.
Bankruptcy Administrator
Post Office Box 1828
Greensboro, NC 27402

This the [11] day of [April], 2002.

OFFICE OF THE CLERK

By: /s/ ANN HELMS
Deputy Clerk

B10(Official Form 10)
(Rev. 7/96)

UNITED STATES BANKRUPTCY COURT Middle District of North Carolina (Greensboro)	**PROOF OF CLAIM**	[ENTERED: July 2, 1998]
In re (Name of Debtor) **J. G. Furniture Group, Inc.**	Case Number: **98-10900**	**THIS SPACE IS FOR COURT USE ONLY**

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.

Name of Creditor: (The person or other entity to whom the debtor owes money or property) **Great-West Life and Annuity**	❑ Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.
Name and Address Where Notices Should be Sent **Great-West Life and Annuity Insurance Co.** 8515 East Orchard Road Englewood, CO 80111 Attn: James L. Rairdon, 7T2 Telephone No. (303) 689-5759	❑ Check box if you have never received any notices from the bankruptcy court in this case. ❑ Check box if address differs from the address on the envelopes sent to you by the court.

ACCOUNT OR OTHER NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR: 153957	Check here if this claim ❑ replaces ❑ amends a previously filed claim, dated:_____
1. BASIS FOR CLAIM: ❑ Goods sold ❑ Services performed ❑ Money loaned ❑ Personal injury/ wrongful death ❑ Taxes ■ Other (describe briefly): Contribution to an employee benefit plan	❑ Retiree benefits as defined in 11 U.S.C. § 1114(a) ❑ Wages, salaries, and compensation (fill out below) Your social security number_____ Unpaid compensation for services performed from _____ to _____ (date) (date)
2. DATE DEBT WAS INCURRED February 17 – April 2, 1998	3. IF COURT JUDGMENT, DATE OBTAINED:

4. CLASSIFICATION OF CLAIM. Under the Bankruptcy Code all claims are classified as one or more of the following: (1) Unsecured nonpriority, (2) Unsecured Priority, (3) Secured. It is possible for part of a claim to be in one and part in another.

CHECK THE APPROPRIATE BOX OR BOXES below that best describe your claim and STATE THE AMOUNT OF THE CLAIM AT THE TIME CASE FILED.

❑ SECURED CLAIM $_____ Attach Evidence of Perfection of security interest. Brief Description of Collateral: ❑ Real Estate ❑ Motor Vehicle ❑ Other (Describe briefly): Amount of arrearage and other charges at time case filed included in secured claim above, if any $_____ ❑ UNSECURED NONPRIORITY CLAIM $ _____ A claim is unsecured if there is no collateral or lien on property of the debtor securing the claim or to the extent that the value of such property is less than the amount of the claim. ■ UNSECURED PRIORITY CLAIM $27,773.51 Specify the priority of the claim.	❑ Wages, salaries, or commissions up to $4,000*, earned not more than 9O days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3) ■ Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4) ❑ Up to $1,800* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § (507)(a)(6) ❑ Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7) ❑ Taxes or penalties of governmental units—11 U.S.C. § 507(a)(8) ❑ Other - Specify applicable paragraph of 11 U.S.C. § 507(a)____ * Amounts are subject to adjustment on 4/1/98 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

5. TOTAL AMOUNT OF CLAIM AT TIME CASE FILED:	$_____ (Unsecured)
☐ Check this box if claim includes charges in addition to the principal amount of the claim. Attach itemized statement of all additional charges.	$_____ (Secured) $27,773.51 (Priority) $27,773.51 (Total)

6. CREDITS AND SETOFFS. The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. In filing this claim, claimant has deducted all amounts that claimant owes to debtor.

7. SUPPORTING DOCUMENTS. *Attach copies of supporting documents,* such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, or evidence of security interests to original and each copy. If the documents are not available, explain. If the documents are voluminous, attach a summary.

8. DATE-STAMPED COPY. To receive an acknowledgement of the filing of your claim, enclose a stamped, self-addressed envelope and additional copy of this proof of claim.

THIS SPACE FOR COURT USE ONLY

[#245]

DATE: [June 25, 1998]	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any): /s/James L. Rairdon James L. Rairdon, Senior Paralegal

PENALTY for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

LIST OF EXHIBITS FOR

J.G. Furniture Group, Inc.

Case No. 98-10900

A. Services Contract issued by Great-West under Plan No. 153957 with an effective date of April 28, 1996.

B. Stop-Loss Contract issued by Great-West under Plan No. 153957 with an effective date of April 28, 1996.

C. Great-West Summary Statement for the month of April, 1998, Daily Accounting Reports for February, March and April, 1998, Benefit Administration System Issued Claims Listings for February, March and April, 1998, and Group Premium Statement for February, 1998 reflecting a total amount owed to Great-West as $27,773.51. The following is an itemization of the amounts due:

February 17 - 27, 1998 claims transfer	$ 1,510.28
March admin. fees and premium (est.)	4,334.55
March, 1998 claims transfer	21,005.02
April 2, 1998 paid claims	923.66
Total	$ 27,773.51

Attached to and forming part of the
Services Contract between

GREAT-WEST LIFE & ANNUITY INSURANCE COMPANY

and
JG FURNITURE GROUP, INC.

The Services Contract which was effective on APRIL 28, 1996 and is dated JUNE 21, 1996 is hereby amended as of **MAY 1, 1997** by deleting SCHEDULE B and replacing it with the attached **SCHEDULE B.**

Dated at Englewood, Colorado this [23rd] day of [June], 19[97].

GREAT-WEST LIFE & ANNUITY INSURANCE COMPANY

/s/D. C. FERMAN
Senior Vice-President, General Counsel and Secretary

/s/NICOLE FLOCK
For the Actuary

/s/W. J. McCALLUM
President

The terms of this Contract are accepted by **JG FURNITURE GROUP,INC.** this [3rd] day of [September], 1997

By /s/RDmt
TITLE [Dr. Human Resources]

SERVICES CONTRACT
SCHEDULE B - SCHEDULE OF FEES

The Fees for the Services provided under the terms of this contract will be as set forth in the following paragraph.

The Contractholder will pay to Great-West on the first day of each **Contract Month,** an amount equal to $32.96 per **Employee** covered under the Plan during the **Contract Month** in question.

TERMINAL FEE

On the Date of termination of this contract, the Contractholder will pay to Great-West an amount equal to $64.65 per **Employee** covered under the Plan at the beginning of the **Contract Month** immediately prior to the date of termination of this contract.

SERVICES CONTRACT

This **contract** entered into on APRIL 28, 1996 (hereinafter referred to as the Effective Date)

Between

GREAT-WEST LIFE & ANNUITY INSURANCE COMPANY,

hereinafter referred to as "Great-West"

-and-

JG FURNITURE GROUP, INC.

hereinafter referred to as "the Contractholder."

The Contractholder has established a Health Care Payment Plan or Health Care Payment Plan and Trust for the benefit of its **Employees** and **Dependents** (hereinafter referred to as the "Plan").

The Plan is an **Employee** benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 and the undersigned fiduciary (hereinafter referred to as the "Fiduciary") of the Plan hereby retains Great-West to provide services for the Plan in accordance with the following terms and conditions contained herein.

ARTICLE 1 - DEFINITIONS

In this contract unless otherwise specifically provided:

(1) **"Dependent"** and **"Employee"** mean **Dependent** and **Employee** as defined by the Plan;

(2) **"Anniversary Date"**, **"Contract Months"** and **"Contract Years"** will be calculated for:

(A) the period APRIL 28, 1996 through APRIL 30, 1997, from the effective date; and

(B) any period thereafter, from MAY 1;

MAY 1 of any year will be known as the **Anniversary Date**;

(3) **"Contract Year"** means that period of 12 consecutive months which begins on the **Anniversary Date**.

(4) **"Coverages"** provided under the Plan and covered by this contract are:

Hospital and Medical Coverage
Weekly Indemnity Coverage
Dentalcare Coverage
VIsioncare Coverage
Prescription Drug Coverage

ARTICLE 2 - ADMINISTRATIVE SERVICES AND FEES

Great-West agrees to perform such services involving the performance of non-discretionary duties as are specified in the **Schedule of Services** marked Schedule "A", which is attached hereto and forms part of this contract in accordance with the terms and conditions of this contract.

To facilitate the performance of such duties:

(1) the Contractholder has advised its bank that Great-West is authorized to demand moneys payable by the Contractholder for checks issued for benefit payments made by Great-West under the Plan.

(2) Great-West will initiate transfers from the Contractholder's designated bank account with the Transfer Frequency shown in Schedule C. The Contractholder agrees to maintain funds in such account both before and after termination of this Services Contract which are adequate to cover checks issued for benefit payments made by Great-West under the Plan and the Deficit Recoveries defined in the Article entitled Deficit Recovery of the Stop-Loss Contract, if any, issued to the Contractholder by Great-West.

The Contractholder and Fiduciary agree to pay Great-West the fees specified in the **Schedule of Fees** marked Schedule "B" which is attached hereto and forms part of this contract as reasonable compensation for services necessary for the

Plan's operation. The Contractholder and Fiduciary will be jointly and severally liable for the payment of such fees. Such fees will be paid as described in the attached Schedule B. A grace period of 31 days will be granted for each payment of fees falling due after the first payment during which period this contract will remain in force. If any payment is not made within the days of grace, this contract will automatically terminate at the end of the grace period. No written notice of such automatic termination is required. If this contract terminates for any reason, the Contractholder and Fiduciary will be liable for all payments due and unpaid, including a pro-rata payment for any time this contract is in force during the grace period.

TERMINAL FEE

Subject to all provisions of this Article 2, a Terminal Fee is due and payable on the date of termination of this contract. The method of determining this Terminal Fee is shown in the attached Schedule B, SCHEDULE OF FEES.

ARTICLE 3 - FURNISHING OF INFORMATION; ACCESS TO RECORDS

The Contractholder and Fiduciary will furnish Great-West, on request, with correct and complete information required by Great-West to provide the services which Great-West has agreed to perform under this contract, including, but not limited to, a copy of the Plan and any amendments thereto. The information will be furnished at the times and in such manner as Great-West may request. Great-West will assume that all such information is complete and accurate and will be under no duty to question the accuracy of such information. Great-West, at its discretion, may charge additional fees for its services where information is not furnished, is incomplete or inaccurate or is not furnished at the time or in the manner as requested. The Contractholder agrees to give Great-West the right to inspect and copy the

records of the Contractholder which are pertinent to the operation of the Plan. Such right will continue for the 5 years immediately following termination of this contract.

All communications sent to the Contractholder or Fiduciary from Great-West will be transmitted to the Contractholder at the address appearing below or to such other person and address as may from time to time be designated by the Contractholder in writing. Notice transmitted to the Contractholder as aforesaid will be considered received by the Contractholder and Fiduciary. Notice sent to Great-West will be directed to the address shown below or to such other address as Great-West may designate in writing from time to time.

ARTICLE 4 - AUTHORITY TO CONTROL AND MANAGE THE PLAN

The Contractholder and Fiduciary acknowledge that they have authority to control and manage the operation of the Plan. It is expressly agreed that under no circumstances will Great-West be designated as plan administrator or a fiduciary of the Plan. Nothing herein will be deemed to constitute Great-West a party to the Plan or to confer upon Great-West any authority or control respecting management of the Plan, authority or responsibility in connection with administration of the Plan or responsibility for the terms or validity of the Plan. Great-West will not be responsible for any tax liability which may be imposed upon the Contractholder, any fiduciary or any **Employee** or **Dependent** under the Plan. The Contractholder and Fiduciary further agree that nothing herein will be deemed to impose upon Great-West any obligation to any **Employee** or **Dependent** under the Plan.

ARTICLE 5 - INDEMNIFICATION AND LIMITATION OF LIABILITY

The Contractholder and Fiduciary will indemnify, protect and hold Great-West harmless from any loss, liability, claim or expense (including attorneys' fees, court costs and expenses of litigation) arising out of any act or omission of the Contractholder or Fiduciary in connection with the Plan. The Contractholder and Fiduciary agree to indemnify Great-West and hold Great-West harmless against any tax relating to this contract, including any accrued interest and penalties levied on such tax, but excluding any tax based upon Great-West's net income. The terms of this provision will survive the termination of this contract.

Great-West will not be liable for any act or failure to act, in the exercise of its powers and performance of its duties hereunder, which act or failure to act is performed by Great-West in good faith.

Great-West agrees to indemnify the Contractholder and hold the Contractholder harmless against any and all loss, damage, and expense with respect to this contract resulting from or arising out of the dishonest, fraudulent or criminal acts of Great-West's employees, acting alone or in collusion with others.

Upon termination of this contract, or in the event of termination of individual employee coverages, it is the Contractholder's responsibility to collect any and all drug benefit cards and group health benefit cards from the Contractholder's employees and dependents. The Contractholder and Fiduciary agree to indemnify, protect and hold Great-West harmless from any loss, liability, claim or expense (including attorneys' fees, court costs and expenses of litigation) arising from payment of claims which

were incurred outside the contractual eligibility period of the group or of any employee or dependent.

ARTICLE 6 - CONTRACT TERMINATION

This contract may be terminated at any time by either the Contractholder and Fiduciary or Great-West, provided written notice of such termination is given at least 31 days in advance. In addition, this contract:

(1) may terminate immediately upon termination of the Stop-Loss Contract, if any, between Great-West and the Contractholder, or

(2) may terminate upon amendment of the Plan in a manner deemed unsatisfactory by Great-West, provided that Great-West gives 31 days written notice of such termination to the Contractholder; or

(3) will terminate immediately upon failure of the Contractholder to comply with any term or condition of this contract, such as but not limited to failure to:

(A) pay the Administrative Fees as specified in the Article of this contract entitled Administrative Services and Fees; or

(B) fund the bank account(s) (referred to in the Article of this contract entitled Administrative Services and Fees) established to handle payment of the benefits provided under the Plan.

If prior to the date of termination of this contract, the Contractholder had elected Terminal Protection under the Stop-Loss Contract issued to the Contractholder by Great-

West and such Terminal Protection is in effect on the date this contract terminates, then Great-West will continue to process claims after the date of termination of this contract.

ARTICLE 7 - AMENDMENT OF SCHEDULE OF FEES

Unless otherwise indicated in the Schedule of Fees, the fees shown are for the first **Contract Year**.

Great-West has the right to revise the **Schedule of Fees**:

(1) when the Contractholder's Plan is amended; and

(2) for the period APRIL 28, 1996 through APRIL 30, 1997, not more than once in that 12 month and 2 day period, except as provided in (5) below; and

(3) on or after the second anniversary of this contract but not more than once in any 12 month period, except as provided in (5) below; and

(4) when the services described in the **Schedule of Services** are changed; and

(5) at any time during the first or subsequent **Contract Years**:

(A) if the **Coverages** under the Contractholder's Plan are changed;

(B) if the provisions of the Contractholder's Plan have to be changed because of a change in law; or

(C) if there is a change in the number of **Employees** and/or **Dependents** covered under the Contractholder's Plan for any

Coverages provided under the Contractholder's Plan which equals or exceeds:

(a) 10% in any **Contract Month** when compared to the prior **Contract Month**; or

(b) 20% at any time within a **Contract Year**. In this case, the change in the number of **Employees** and/or **Dependents** covered will be determined by comparing the number of **Employees** and/or **Dependents** covered for any **Coverages** under the Contractholder's Plan at the beginning of the first **Contract Month** of the **Contract Year** in question with the number of **Employees** and/or **Dependents** covered for any **Coverages** under the Contractholder's Plan at the beginning of any subsequent **Contract Month**. The Contractholder agrees to make available to Great-West all information necessary to determine such change. If the change in the number of **Employees** and/or **Dependents** covered under the Plan is such that a change in fees results, then Great-West will advise the Contractholder of its intention to change the fees.

(D) upon addition or deletion of coverage for subsidiary or affiliated companies or corporate divisions.

The effective date of the change in fees will be the effective date of the event in (A), (B), (C) or (D) above that causes such change.

ARTICLE 8 - MISCELLANEOUS

(1) An **Employee** or **Dependent** under age 65 whose Hospital and Medical Coverage under the Plan ends due to:

(A) termination of employment;

(B) termination of employment in an eligible class;

(C) change in marital status (in the case of a **Dependent**);

(D) attainment of the limiting age specified in the Plan (in the case of a **Dependent** child); or

(E) death of the **Employee** (in the case of a **Dependent**); or

(F) termination of the Plan but only if the Plan is not replaced by similar group medical coverage within 30 days and such **Employee** or **Dependent** had been covered under the Plan for at least the 90 day period prior to the date the Plan terminated;

will be entitled to purchase medical insurance from Great-West. This medical insurance is referred to as Health Conversion Coverage. If such **Employee** has **Dependents** who are also covered under the Plan, the Health Conversion Coverage may also cover such **Dependents**.

NOTE: **Employees** and/or their eligible **Dependents** who are eligible for the COBRA health continuation coverage provided under the Plan, will only be able to apply for Health Conversion Coverage at the end of the applicable 18 month or 36 month maximum period of continuation allowed under COBRA. This will be the case unless:

(A) the Plan terminates in its entirety and isn't replaced by similar group medical coverage within 30 days; or

(B) the **Employee** becomes ineligible for disability benefits under the Social Security Act after 18 months but before the end of the 29 month maximum period of continuation allowed under COBRA if the **Employee** is eligible for disability benefits under the Social Security Act.

Issuance of the Health Conversion Coverage will be subject to all of the following conditions:

(A) No evidence of insurability is required.

(B) The **Employee** or **Dependent** is not eligible for Medicare.

(C) The **Employee** or **Dependent** is not covered by or eligible for similar benefits, as a result of termination of his Hospital and Medical Coverage, under any policy, contract, or other arrangement for group insurance benefits or services.

(D) Written application and the first premium for the Health Conversion Coverage must be

delivered or mailed to Great-West at its Executive Offices in Englewood, Colorado within 31 days after the date on which the covered **Employee** or **Dependent's** Hospital and Medical Coverage under the Plan terminates.

(E) The Health Conversion Coverage provides coverage customarily issued by Great-West at the then current rates. Benefits provided under the Health Conversion Coverage may not be the same as those provided by the Plan.

(F) The Health Conversion Coverage is effective on the next day after the date on which coverage under the Plan ceases.

(2) Great-West will have the sole right to make claims under the Subrogation and Right of Recovery Provision contained in the Plan. In its sole discretion Great-West may litigate, negotiate, settle, compromise, release or waive any such claim. The Contractholder hereby assigns to Great-West all of its rights to make, litigate, negotiate, settle, compromise, release or waive any such claim.

All money recovered by Great-West under the Subrogation and Right of Recovery Provision will be distributed as follows:

(A) first, to Great-West to be applied to reduce Great-West's payment of Specific Stop-Loss Benefits pursuant to the Article entitled Specific Stop Loss Benefit, if any, of the Stop-Loss Contract, if any, issued by Great-West to the Contractholder with regard to any

Employee or **Dependent** against whom the Subrogation and Right of Recovery Provision is enforced; and

(B) secondly, to Great-West to be applied to reduce Great-West's payment of Aggregate Stop-Loss Benefits pursuant to the Article entitled Aggregate Stop Loss Benefit, if any, of the Stop-Loss Contract, if any, issued by Great-West to the Contractholder; and

(C) thirdly, to the Contractholder.

All money recovered will be applied to the accounting for the **Contract Year** in which the claim giving rise to subrogation or right of recovery was paid. If claim expenses were paid in more than one **Contract Year**, the money will be applied on a pro rata basis in accordance with the amount of claim expenses paid in each of the **Contract Years.**

Action taken under the Subrogation and Right of Recovery Provision contained in the Plan may result in the incurral of legal expenses. Such legal expenses will be borne by Great-West and the Contractholder in the same proportion as any money recovered under the Subrogation and Right of Recovery Provision is distributed between Great-West and the Contractholder. If no money is recovered, the legal expenses will be borne by Great-West and the Contractholder in the same proportion that each party's share of claim payments bears to the total amount of claim payments. Legal expenses will not be used when calculating the Specific Stop-Loss Benefit pursuant to the Article entitled Specific Stop Loss Benefit, if any, or the Aggregate Stop-Loss Benefit pursuant to the Article entitled Aggregate

Stop Loss Benefit, if any, of the Stop-Loss Contract, if any, issued by Great-West to the Contractholder.

ARTICLE 9 - ENTIRE CONTRACT

This contract contains the entire agreement between the parties and sets forth in full the services to be rendered by Great-West. It may only be modified or amended by written agreement of the parties hereto and any representation or statement not expressly set forth hereunder will not be binding on any party hereto in any respect.

JG FURNITURE GROUP, INC.

By _____
Signature Title Date

_____
Fiduciary Signature Title Date

_____
Mailing Address of Fiduciary

GREAT-WEST LIFE & ANNUITY INSURANCE COMPANY

By /s/ Robyn Sims Assistant Account Manager June 21, 1996
Signature Title Date

Tower 1, Great-West Life Center
8505 E. Orchard Road
Englewood, CO 80111

SERVICES CONTRACT
SCHEDULE A - SCHEDULE OF SERVICES

The following services will be provided for the administration of the Contractholder's Plan:

Drafting Assistance
- Booklet
- Booklet Amendments

Standard Allowance for Booklet printing

I.D. Card Preparation

Standard Allowance for I.D. Card printing

Preparation of enrollment procedures

Assistance in plan enrollment

Late applicant underwriting

Claim form preparation

Standard Allowance for Claim form printing

Check preparation

Standard Allowance for Check printing

Benefit determination in accordance with the Plan

Benefit payments in accordance with the Plan

Claims Reports:
- Monthly detail list of plan payments
- Monthly summary by benefit type

Issued Check Listing

Preparation of Physician payment reports Actuarial cost estimates:
- Open and Unreported claims liabilities
- Review of Past Experience
- Projection of future cost
- Legislated changes in benefits
- Plan modification

Expenses incurred by Great-West for services not covered or for covered services beyond standard allowances will be charged as incurred.

SERVICES CONTRACT
SCHEDULE B - SCHEDULE OF FEES

The Fees for the Services provided under the terms of this contract will be as set forth in the following paragraph.

The Contractholder will pay to Great-West on the first day of each **Contract Month**, an amount equal to $31.03 per **Employee** covered under the Plan during the **Contract Month** in question.

TERMINAL FEE

On the Date of termination of this contract, the Contractholder will pay to Great-West an amount equal to $59.86 per **Employee** covered under the Plan at the beginning of the **Contract Month** immediately prior to the date of termination of this contract

SERVICES CONTRACT SCHEDULE C

Transfer Frequency	Semi-Monthly

Attached to and forming part of
Group Contract No. **39801GSL**

issued by

GREAT-WEST LIFE & ANNUITY INSURANCE COMPANY

to

JG FURNITURE GROUP, INC.

This Contract is hereby amended as of **MAY 1, 1997** by deleting SCHEDULE A and replacing it with the attached **SCHEDULE A**.

Dated at Englewood, Colorado this [23rd] day of [June], 19[97].

GREAT-WEST LIFE & ANNUITY INSURANCE COMPANY

/s/ D. C. FERMAN
Senior Vice-President, General Counsel and Secretary

/s/ NICOLE FLOCK
For the Actuary

/s/ W. J. McCALLUM
President

Accepted and attached to the Contract by **JG FURNITURE GROUP,INC.** this [3rd] day of [September], 19[97].

By /s/RDmt
TITLE [Dr. Human Resources]

STOP LOSS CONTRACT
SCHEDULE A

The Level and Factor shown below apply to all **Employees** in all **Employee Classes**:

Specific Stop-Loss Level	$75,000.00
Aggregate Limitation Factor	10.00%

The Coverages and Factors applicable to each **Employee Class** are shown below:

Employee Class	**Coverages**	**Factors**
ALL EMPLOYEES		
	Monthly Attachment Factor for All Coverages:	$257.23
	Terminal Attachment Factor for All Coverages:	$485.44
	Premium Factor for All Coverages:	$23.75

The following overrides anything to the contrary expressed or implied in this contract.

Action taken under the Subrogation and Right of Recovery Provision contained in the Plan may result in the incurral of legal expenses. Such legal expenses will be borne by Great-West and the Contractholder in the same proportion as any money recovered under the Subrogation and Right of Recovery Provision is distributed between Great-West and the Contractholder. If no money is recovered, the legal expenses will be borne by Great-West and the

Contractholder in the same proportion that each party's share of **Claim Payments** bears to the total amount of **Claim Payments**. Legal expenses will not be used when calculating the Specific Stop-Loss Benefit pursuant to the Article of this contract entitled Specific Stop-Loss Benefit or the Aggregate Stop-Loss Benefit pursuant to the Article of this contract entitled Aggregate Stop-Loss Benefit.

All money recovered by Great-West under the Subrogation and Right of Recovery Provision of the Plan will be distributed as follows:

(1) first, to Great-West to be applied to reduce Great-West's payment of Specific Stop-Loss Benefits pursuant to the Article of this contract entitled Specific Stop-Loss Benefit with regard to the **Employee** or **Dependent** against whom the Subrogation and Right of Recovery Provision is enforced; and

(2) secondly, to Great-West to be applied to reduce Great-West's payment of Aggregate Stop-Loss Benefits pursuant to the Article of this contract entitled Aggregate Stop-Loss Benefit; and

(3) thirdly, to the Contractholder.

All money recovered will be applied to the accounting for the **Contract Year** in which the claim giving, rise to subrogation or right of recovery was paid. If claim expenses were paid in more than one **Contract Year**, the money will be applied on a pro rata basis in accordance with the amount of claim expenses paid in each of the **Contract Years**.

GREAT-WEST LIFE & ANNUITY
INSURANCE COMPANY
EXECUTIVE OFFICES - ENGLEWOOD, COLORADO

APPLICATION FOR CONTRACT

JG FURNITURE GROUP, INC.

(the Applicant) hereby applies to Great-West Life & Annuity Insurance Company for **Contract No. 39801GSL** in the form attached hereto. This Contract has been approved and its terms accepted by the Applicant.

Dated at this day of

JG FURNITURE GROUP, INC.

_____ BY_____
Witness

_____ _____
Licensed Resident Agent Title

GREAT-WEST LIFE & ANNUITY
INSURANCE COMPANY
EXECUTIVE OFFICES
8505 EAST ORCHARD ROAD,
ENGLEWOOD, COLORADO 80111

STOP-LOSS CONTRACT

This Stop-Loss Contract provides excess loss protection for Employers who have chosen to self-fund their health benefits.

GREAT-WEST LIFE & ANNUITY INSURANCE COMPANY (herein called Great-West) in consideration of the application of

JG FURNITURE GROUP, INC.
(herein called the Contractholder)

and in consideration of the payment of premiums as herein provided, hereby agrees to pay to the Contractholder the benefits as provided herein.

This contract will be effective from **APRIL 28, 1996** (herein called the Effective Date).

This contract is not in lieu of and does not affect any requirement for coverage by Workers' Compensation insurance.

All provisions set forth on the following pages form a part of this contract as fully as if the same were stated over the signatures hereto.

IN WITNESS WHEREOF Great-West has caused this contract to be executed at its Executive Offices.

/s/D. C. FERMAN
Senior Vice-President, General Counsel and Secretary

/s/ROBYN SIMS
For the Actuary

/s/W. J. McCALLUM
President

Stop-Loss Insurance
GSL-M2

Contract Form No. GSL-190 **Contract No. 39801GSL**

ARTICLE 1 - DEFINITIONS

(1) **"Aggregate Limitation Factor"** is as shown in Schedule "A".

(2) **"Bank Account"** means the bank account(s) established by the Contractholder from which Great-West is authorized to demand moneys payable by the Contractholder for **Benefit Payments** made under the Plan.

(3) **"Benefit Payments"** for a **Contract Month** means the sum of checks issued for **Claim Payments** made for the **Contract Month** under the provisions of the **Plan**, less payments made by Great-West under the Article of this contract entitled Specific Stop-Loss Benefit.

(4) **"Claim Payments"** for a **Contract Month** means payments made by Great-West for a **Contract Month** for benefits provided under the terms of the **Plan**, less any benefit credits under the **Plan**, such as but not limited to refunds and voided checks. In no event will the amounts paid for investigation of or defense against claims be included in determining **Claim Payments** for any **Contract Month**.

If Great-West determines that a claim for benefits under the **Plan** for an **Employee** or one of his eligible **Dependents**:

(A) is not payable in whole or in part; but

(B) the Contractholder instructs Great-West to pay an amount greater than that determined by Great-West;

then only the amount determined by Great-West will be considered as a **Claim Payment** when Great-West calculates:

(A) the Specific Stop Loss Benefit for the **Employee** or **Dependent** pursuant to the Article of this contract entitled Specific Stop-Loss Benefit;

(B) the Aggregate Stop Loss Benefit pursuant to the Article of this contract entitled Aggregate Stop-Loss Benefit,

(5) **"Contract Months"** are consecutive periods of one month within a **Contract Year**, except that the last **Contract Month** terminates at the end of the last **Contract Year**. The first **Contract Month** begins on the Effective Date.

(6) **"Contract Year"** is:

(A) for the period APRIL 28, 1996 through APRIL 30, 1997, that period of 12 months and 2 days; and

(B) thereafter, any period of 12 months beginning on MAY 1;

except that the last **Contract Year** will end upon termination of this contract.

(7) **"Coverages"** provided under the Plan and covered by this contract are:

Hospital and Medical Coverage
Weekly Indemnity Coverage
Dentalcare Coverage

Visioncare Coverage
Prescription Drug Coverage

(8) **"Cumulative Attachment Level"** for a **Contract Month** in a **Contract Year** is the sum of the **Monthly Attachment Level** for the **Contract Month** and the **Monthly Attachment Levels** for all previous **Contract Months** in the **Contract Year**.

(9) **"Cumulative Benefit Payments"** for a **Contract Month** in a **Contract Year** means the sum of **Benefit Payments** for the **Contract Month** and the **Benefit Payments** for all previous **Contract Months** in the **Contract Year**.

(10) **"Dependent"** and **"Employee"** and **"Employee Class"** are as defined in the **Plan**.

(11) **"Experience Deficit"** for the first **Contract Month** means any aggregate stop loss benefits paid by Great-West for the first **Contract Month** pursuant to the Article of this contract entitled Aggregate Stop-Loss Benefit. For any succeeding **Contract Month**, **"Experience Deficit"** means the excess of the sum of (A) and (B) over (C) where:

(A) is the **Experience Deficit** for the previous **Contract Month**;

(B) is any aggregate stop loss benefits paid by Great-West for the **Contract Month** pursuant to the Article of this contract entitled Aggregate Stop Loss Benefit;

and

(C) is any reimbursement made by the Contractholder to Great-West for the **Contract Month** pursuant to the Article of this contract entitled Deficit Recovery;

except that in no event will the **Experience Deficit** for the last **Contract Month** in any **Contract Year** prior to the **Contract Year** in which this Contract terminates exceed the sum of (D) and (E) where:

(D) is the **Experience Deficit** for the last **Contract Month** of the previous **Contract Year**, and

(E) is the product of the **Aggregate Limitation Factor** and the **Cumulative Attachment Level** for the **Contract Year**.

(12) **"Exposure"** for a Coverage and **Contract Month** and **Employee Class** is the number of **Employees** in that **Employee Class** having that Coverage under the **Plan** at the beginning of the second prior **Contract Month**. For the first three **Contract Months** of the first **Contract Year, Exposure** for a Coverage and **Employee Class** is the number of **Employees** in that **Employee Class** having that Coverage under the **Plan** at the beginning of the first **Contract Month**.

Note: The term **"Employees"** as used in this definition will include **Employees** and/or eligible **Dependents** whose coverage under the **Plan** is being continued under the COBRA HEALTH CONTINUATION provision which forms a part of the **Plan**.

(13) **"Monthly Attachment Factor"** is as shown in Schedule "A".

(14) **"Monthly Attachment Level"** for a **Contract Month** before termination of this contract, means the sum for all **Coverages** and **Employee Classes** of the product of the **Monthly Attachment Factor** multiplied by the **Exposure**.

(15) **"Plan"** means that part of the Contractholder's Employee benefit plan which is:

(A) administered by Great-West; and

(B) listed in the definition of **"Coverages"**; and

(C) in effect on the Effective Date of this contract.

Any amendments accepted by Great-West which are made to the **Plan** from time to time while this contract is in effect are also included, provided they are administered by Great-West and apply to the **"Coverages"** listed in the definition of **"Coverages"** in this Article of the Contract

(16) **"Premium Factor"** is as shown in Schedule "A".

(17) **"Specific Stop-Loss Level"** is as shown in Schedule "A."

(18) **"Terminal Attachment Factor"** is as shown in Schedule "A".

ARTICLE 2 - CONTRACT PAYMENTS

The Contractholder will make funds available in its **Bank Account(s)** which are sufficient to honor all of the Contractholder's obligations under the **Plan** and under this contract while it is in force and for 15 months after this contract's termination.

ARTICLE 3 - SPECIFIC STOP-LOSS BENEFIT

On and after the date within any **Contract Year** prior to termination of this contract that the **Claim Payments** made for all **Contract Months** in such **Contract Year** for Hospital and Medical Coverage provided under the **Plan** for each **Employee** or **Dependent** reach the Specific Stop-Loss Level, Great-West will reimburse the Contractholder for the remainder of that **Contract Year** for **Claim Payments** made on behalf of that **Employee** or **Dependent** which are in excess of the Specific Stop-Loss Level.

Only **Claim Payments** made for expenses incurred after the Effective Date of this contract will be used when determining the Specific Stop-Loss Benefit for an **Employee** or **Dependent**. Specific Stop Loss protection does not apply to Weekly Indemnity, Dentalcare and Visioncare **Coverage(s)**.

No Specific Stop-Loss Benefit reimbursements will be made by Great-West for **Claim Payments** made after the date of termination of this contract, regardless of when the claim was incurred.

ARTICLE 4 - AGGREGATE STOP-LOSS BENEFIT

For each **Contract Month**, Great-West will reimburse the Contractholder in an amount equal to the positive excess, if any, of the sum of (1) and (2) over the sum of (3) and (4) where:

(1) is the **Cumulative Benefit Payments** for the **Contract Month**;

(2) is the sum of any reimbursements made by the Contractholder to Great-West for any prior **Contract Months** in the **Contract Year** pursuant to the Article of this contract entitled Deficit Recovery;

(3) is the **Cumulative Attachment Level** for the **Contract Month**;

(4) is the sum of any **Aggregate Stop-Loss Benefits** paid by Great-West pursuant to this Article for any prior **Contract Months** in the **Contract Year**.

Aggregate Stop-Loss protection does not apply to Weekly Indemnity, Dentalcare and Visioncare **Coverage(s)**.

ARTICLE 5 - DEFICIT RECOVERY

At the end of every **Contract Month** in a **Contract Year**, the Contractholder will reimburse Great-West for the lesser of:

(1) the **Experience Deficit** for the previous **Contract Month**; and

(2) the excess, if any, of:

(A) the **Monthly Attachment Level** for the **Contract Month**; and

(B) the **Benefit Payments** for the **Contract Month**.

ARTICLE 6 - PREMIUMS

The premium for each **Contract Month** is equal to the sum for all **Coverages** and **Employee Classes** under the **Plan** of the product of the Premium Factor shown in Schedule "A", multiplied by the number of **Employees** covered during that **Contract Month**.

The Contractholder will pay the premiums on or before the first day of each **Contract Month**. A grace period of 31 days will be granted for the payment of each premium falling due

after the first premium, during which period this contract will remain in force. If:

(1) any premium is not paid by the Contractholder to Great-West within the grace period, this contract will automatically terminate at the end of the grace period. No written notice of such automatic termination is required. If this contract terminates for any reason, the Contractholder will be liable for all premiums due and unpaid, including a pro rata premium for any time this contract is in force during the grace period.

(2) a check in payment of the premium due is returned to Great-West because there were not sufficient funds (NSF) in the Contractholder's **Bank Account** to cover the check, then this contract will automatically terminate on the date on which the grace period for such premium ends. No written notice of such automatic termination is required. This will be the case even if the check presented for payment by Great-West is found to be NSF after the end of the grace period.

ARTICLE 7 - SUBSIDIARIES AND AFFILIATES

Great-West may approve the inclusion of **Employees** of subsidiary and affiliated companies and their **Dependents** under this contract. The Contractholder will be liable for the payment of all amounts due to Great-West and for the adequate funding of the Contractholder's **Bank Account(s)** with regard to **Employees** and **Dependents** of subsidiary and affiliated companies.

ARTICLE 8 - ADMINISTRATION OF THE PLAN, ACCESS TO INFORMATION

The Contractholder or his agent will furnish monthly to Great-West and warrant the accuracy of the number of **Employees** in each **Employee Class** and the types of **Coverage(s)** they have under the **Plan** for such **Contract Month**.

Great-West will have the right to inspect and copy the records of the Contractholder and its agent which are pertinent to the operation of the **Plan** and this contract. Such right will continue for 5 years immediately following termination of this contract.

ARTICLE 9 - AMENDMENTS AND ALTERATIONS

(1) Unless otherwise indicated, the factors shown in Schedule "A" are for the first **Contract Year.**

(2) After the end of the first **Contract Year**, Great-West will have the right to modify the **Specific Stop-Loss Level** and the factors shown in Schedule "A" on any premium due date, but not more frequently than ones in each **Contract Year** except as provided in (3) below.

(3) A change in factors shown in Schedule A can be made at any time during the first or subsequent **Contract Years**:

(A) if the **Coverages** provided under the Contractholder's **Plan** are changed; or

(B) if the provisions of the Contractholder's **Plan** have to be changed because of a change in law; or

(C) if there is a change in the number of **Employees** and/or **Dependents** covered for any of the **Coverages** provided under the Contractholder's **Plan** which equals or exceeds:

(a) 10% in any **Contract Month** when compared to the prior **Contract Month**; or

(b) 20% at any time within a **Contract Year**, in this case, the change in the number of **Employees** and/or **Dependents** covered will be determined by comparing the number of **Employees** and/or **Dependents** covered for any **Coverages** under the Contractholder's **Plan** at the beginning of the first **Contract Month** of the **Contract Year** in question with the number of **Employees** and/or **Dependents** covered for any **Coverages** under the Contractholder's **Plan** at the beginning of any subsequent **Contract Month**. The Contractholder agrees to make available to Great-West all information necessary to determine such change.

(D) upon addition or deletion of coverage for subsidiary or affiliated companies or corporate divisions.

The effective date of the change in factors will be the effective date of the event in (A), (B), (C) or (D) above that causes such change.

ARTICLE 10 - CONTRACT TERMINATION

This contract may be terminated by either the Contractholder or Great-West by providing 31 days written advance notice to the other party.

In addition, this contract will terminate:

(1) immediately upon termination of the Services Contract between Great-West and the Contractholder, or

(2) upon amendment of the **Plan** in a manner deemed unsatisfactory by Great-West, provided Great-West gives 31 days written notice of such termination to the Contractholder. Great-West will not be liable under this contract for any Benefit Payments, Specific Stop-Loss Benefit reimbursements, Aggregate Stop-Loss Benefit reimbursements or any other payment attributable to such amendment.

(3) immediately upon failure of the Contractholder to comply with any term or condition of this contract, such as but not limited to failure to:

(A) pay the premiums as specified in this contract; or

(B) fund the **Bank Account(s)** established to handle **Benefit Payments** under the **Plan**.

If the contract terminates due to the failure of the Contractholder to comply with (3)(A) or (3)(B) above, the Contractholder will be solely liable for all unpaid Employee and Dependent claims, regardless of when incurred.

If any state or other jurisdiction enacts or amends a law or regulation which, in the opinion of Great-West prohibits the continuance of this contract, the contract will terminate in respect of that jurisdiction. Termination of the contract will take place on the effective date of the law, regulation or amendment as determined by Great-West.

ARTICLE 11 - TERMINAL PROTECTION

The Contractholder may elect the Terminal Protection described below on:

(1) the Effective Date of this contract. If this is the case, the Terminal Protection becomes effective on the Effective Date of this contract.

(2) any subsequent anniversary of the Effective Date. If this is the case, the Terminal Protection will not become effective until 12 months after such anniversary.

The Contractholder may request deletion of the Terminal Protection by sending a request in writing to Great-West to delete the Terminal Protection. If he does so, the deletion of the Terminal Protection will not become effective until the date which is 12 months after the end of the **Contract Year** in which the request to delete the Terminal Protection was received by Great-West.

If the Terminal Attachment Factor shown in Schedule A is applicable on the date of termination of this contract, then:

(1) the following modifications are hereby made to the terms listed below which are defined in Article 1 - Definitions:

(A) the last **Contract Year** will also include any months after termination of this contract in which any **Claim Payments** are made by Great-West.

(B) the **Monthly Attachment Level** for each of the first two **Contract Months** after termination of this contract is the Terminal Attachment Level defined in (2) below.

(C) the **Cumulative Attachment Level** will be calculated as follows:

(a) for the first **Contract Month** following termination of this contract, it will be the sum of the **Cumulative Attachment Level** for the last **Contract Month** before such termination and the Terminal Attachment Level for the first **Contract Month** following termination of this contract.

(b) for any other **Contract Month** following termination of this contract, it will be the sum of the **Cumulative Attachment Level** for the previous **Contract Month** and the Terminal Attachment Level for the current **Contract Month**.

(D) **Benefit Payments** will include the sum of all checks issued for **Claim Payments** made after termination of this contract. The Contractholder agrees to keep his **Bank Account(s)** open to facilitate the handling of

Claim Payments made after termination of this contract.

(2) the following definition is hereby added to this contract:

"Terminal Attachment Level" means:

(A) for each of the first two months just after termination of this contract, the product of (a) and (b) below, where:

(a) is the Terminal Attachment Factor; and

(b) is the **Exposure** for the month.

(B) for each month after that, nil.

(3) the Contractholder understands and agrees that:

(A) the Article of this contract entitled Deficit Recovery is applicable to each **Contract Month** following termination of this contract.

(B) the Terminal Protection described in this Article is applicable to this contract on its termination, even if there is a succeeding carrier or claims administrator and the succeeding carrier or claims administrator agrees to pay claims for expenses incurred by **Employees** and **Dependents** prior to the termination of this contract.

ARTICLE 12 - PARTIES TO THE CONTRACT

The parties to the contract will be the Contractholder and Great-West. This contract will not create any rights or obligations whatsoever on the part of Great-West with respect to the persons covered under the **Plan**, or their beneficiaries.

ARTICLE 13 - MISCELLANEOUS

(1) The Contractholder agrees to indemnify Great-West and hold Great-West harmless against any tax relating to this contract, including any accrued interest and penalties levied on such tax, but excluding any tax based upon Great-West's net income. The terms of this provision will survive the termination of this contract.

(2) Bankruptcy or insolvency of the Contractholder, or the Contractholder's Plan, will not relieve Great-West from its obligation to make payment under this Contract.

ARTICLE 14 - ENTIRE CONTRACT

This contract contains the entire agreement between the parties and sets forth in full the services to be rendered by Great-West. It may only be modified or amended by written agreement of the parties hereto and any representation or statement not expressly set forth hereunder will not be binding on any party hereto in any respect.

STOP-LOSS CONTRACT
SCHEDULE A

The Level and Factor shown below apply to all **Employees** in all **Employee Classes**:

Specific Stop-Loss Level	$75,000.00
Aggregate Limitation Factor	10.00%

The **Coverages** and **Factors** applicable to each **Employee Class** are shown below:

Employee Class	Coverages	Factors
	Monthly Attachment Factor for All Coverages:	$197.87
	Terminal Attachment Factor for All Coverages:	$309.65
	Premium Factor for All Coverages:	$21.99

The following overrides anything to the contrary expressed or implied in this contract.

Action taken under the Subrogation and Right of Recovery Provision contained in the **Plan** may result in the incurral of legal expenses. Such legal expenses will be borne by Great-West and the Contractholder in the same proportion as any money recovered under the Subrogation and Right of Recovery Provision is distributed between Great-West and the Contractholder. If no money is recovered, the legal expenses will be borne by Great-West and the Contractholder in the same proportion that each party's share of **Claim Payments** bears to the total amount of **Claim Payments**. Legal expenses will not be used when calculating the Specific Stop-Loss Benefit pursuant to the Article of this contract entitled Specific Stop-Loss Benefit or the Aggregate Stop-Loss Benefit pursuant to the Article of this contract entitled Aggregate Stop-Loss Benefit.

All money recovered by Great-West under the Subrogation and Right of Recovery Provision of the **Plan** will be distributed as follows:

(1) first, to Great-West to be applied to reduce Great-West's payment of Specific Stop-Loss Benefits pursuant to the Article of this contract entitled Specific Stop-Loss Benefit with regard to the **Employee** or **Dependent** against whom the Subrogation and Right of Recovery Provision is enforced; and

(2) secondly, to Great-West to be applied to reduce Great-West's payment of Aggregate Stop-Loss Benefits pursuant 10 the Article of this contract entitled Aggregate Stop-Loss-Benefit; and.

(3) thirdly, to the Contractholder.

All money recovered will be applied to the accounting for the **Contract Year** in which the claim giving rise to subrogation or right of recovery was paid. If claim expenses were paid in more than one **Contract Year**, the money will be applied on a pro rata basis in accordance with the amount of claim expenses paid in each of the **Contract Years**.

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

[ENTERED: December 31, 2001]

IN RE:	)	
	)	
J. G. FURNITURE GROUP, INC.,	)	**CASE NO.**
	)	**B-98-10900C-7G**
Debtor.	)	

TRUSTEE'S OBJECTION TO ALLOWANCE OF CLAIMS

COMES NOW Charles M. Ivey, III, Trustee of the above Debtor, by and through counsel, and objects to the allowance of Claim No. 245 filed as a priority claim in the amount of $27,773.51, by:

Great West Life & Annuity Insurance Co.
Attn: James Rairden, 7T2
8515 East Orchard Road
Englewood, CO 80111

upon the grounds that this claim is based upon contributions to an employee benefit plan of the Debtor which contributions were related to services rendered by employees of the Debtor more than 180 days prior to the petition or the date of the cessation of the Debtor's business and does not fall within the requirements for priority treatment set forth in 11 U.S.C. § 507(a)(4); therefore, this claim should be reclassified as an unsecured claim.

WHEREFORE, the undersigned Trustee prays that said claim as above set forth be disallowed, reduced or classified as indicated, and that the Debtor have such other and further relief as indicated above.

THIS the [31st] day of December, 2001.

/s/ JOHN M. BLUST
John M. Blust
Attorney for the Trustee,
Charles M. Ivey, III
NCSB # 10250

OF COUNSEL:
IVEY, McCLELLAN, GATTON & TALCOTT, L.L.P.
Attorneys at Law
Post Office Box 3324
Greensboro, North Carolina 27402
Telephone: (336) 274-4658

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

[ENTERED: February 8, 2002]

IN RE: CASE NO. 98-10900C-7G

J. G. FURNITURE GROUP, INC.

DEBTOR CHAPTER 7

GREAT-WEST LIFE & ANNUITY INSURANCE COMPANY'S RESPONSE TO AMENDED TRUSTEE'S OBJECTION TO ALLOWANCE OF CLAIM

Now comes Great-West Life & Annuity Insurance Company ("Great-West"), by and through counsel, and responds to the Amended Trustee's Objection to Allowance of Claim ("Objection") filed December 31, 2001 as follows:

1. This matter is a core proceeding pursuant to 28 U.S.C. §157, and the court has jurisdiction pursuant to 28 U.S.C. §§151, 157, and 1334. The court has the authority to hear this matter pursuant to the General Order of Reference entered August 3, 1984, by the United States District Court for the Middle District of North Carolina.

2. The Debtor filed a Chapter 7 bankruptcy petition on April 7, 1998, and Charles M. Ivey, III, Esq. was appointed as Trustee.

3. Great-West and the Debtor entered into a written contract for the establishment and maintenance of the Debtor's self-funded employee benefits plan ("Plan" or "Contract"). The Debtor submitted to Great-West an Application for Group Coverage ("Application"), and Great-

West accepted the Application. Both parties agreed that the Plan would have an effective date of April 28, 1996. The terms of the Plan are set forth in the Contract, consisting, in part, of the Services Contract and the Stop-Loss Contract. These documents are attached to the Proof of Claim previously filed with the court.

4. By choosing to self-fund its employee benefits, the Debtor accepted primary financial responsibility for the medical claims paid under this Contract. In order to limit its potential claims liability, the Debtor also elected "stop-loss" coverage in return for a monthly premium payment to Great-West. The Stop-Loss Contract is attached to the Proof of Claim as Exhibit B. Stop-loss coverage essentially establishes monthly and cumulative "attachment" levels, which set forth the maximum claims liability that the Debtor incur in connection with the self-funded benefits. In addition, the Debtor made monthly premium payments for certain fully insured portions of the Contract.

5. Under the Contract, providers of health care services send claims directly to Great-West, which processed and paid those claims in accordance with the Plan. See Proof of Claim-Services Contract Schedule of Services. Great-West sought reimbursement up to the Debtor's attachment level for all amounts paid on behalf of the Debtor. The Contract required the Debtor to maintain sufficient funds in a bank account from which Great-West was authorized to initiate wire transfers of the reimbursement amount due. Pursuant to the Contract, the Debtor calculated and submitted its own estimated premiums each month, which subsequently were reviewed and corrected by Great-West. The Debtor was responsible for paying any deficiency or receiving a credit for any overpayment.

6. From April 28, 1996 through March 3, 1998, the Plan was actively in place, with Great-West processing and paying claims on behalf of the Debtor, and the Debtor reimbursing Great-West up to its monthly or cumulative attachment level. On March 3, 1998, a wire transfer was initiated by Great-West as reimbursement for claims paid on the Debtor's behalf between February 17 and 27, 1998. Great-West was notified that the transfer was unsuccessful, which constituted a breach of the Contract. Great-West continued to pay claims in March and early April, after the failed transfer, and the Debtor is also liable for those amounts.

7. A total balance is due to Great-West in the amount of $27,773.51 as follows::

February 17-27, 1998 paid claims	$ 1,510.28
March admin fees and premium	4,334.55
March 1998 claims transfer	21,005.02
April 2, 1998 paid claims	923.66
Total priority claim	$ 27,773.51

8. The Trustee objects to Great-West's claim because the contributions were related to services by (sic) employees more than 180 days prior to the petition date.

9. Great-West seeks a priority claim in the amount of $27,773.51 for reimbursement for claims processed on the Debtor's behalf between February 17 and April 2, 1998. Pursuant to contract, Great-West was performing a benefit to the Debtor when it issued the checks to pay for medical services. The date that Great-West issued the checks to pay for claims submitted by Plan participants is the date of the contribution to the employee benefit plan. The Debtor also owes administrative fees and premiums for services performed during the month of March 1998.

10. These priority amounts are owed by the employee benefit plan within 180 days prior to the filing of the petition. The Debtor filed its petition on April 7, 1998; therefore the 180-day period started on October 10, 1997. All amounts due are clearly within this period.

11. Administrative fees, premiums and claims reimbursements that become due within 180 days prior to the filing of the petition are entitled to priority status. In *Aetna Life Ins. Co. v. The Montaldo Corp. (In re The Montaldo Corp.)* 207 B.R. 112 (Bankr.M.D. N.C. 1997), the bankruptcy court stated that in the case of a self-funded plan, the fund created is merely a conduit for contributions from the employer to the employees. *Montaldo*, 207 B.R. at 116. The amounts that the employer has agreed to pay to the third party administrator, therefore, are contributions to an employee benefit plan, which entitled them to priority treatment. All claims reimbursement due from the Debtor for October 10, 1997 through April 7, 1998 are entitled to the same priority treatment. Further, upon an appeal, the court held that administrative fees and premium were entitled to the same treatment. *Aetna life Ins. Co. v. The Montaldo Corp. (In re The Montaldo Corp.)*, 232 B.R. 853 (D. M.D. N.C. 1997). As a result, Great-West is entitled to a priority claim for all of these amounts, totaling $27,773.51.

12. All documents comprising the Contract reflect that the Debtor chose a self-funded employee health benefit plan, meaning that the Debtor accepted primary financial responsibility for the medical claims paid under the Contract. See Proof of Claim - Services Contract and Stop-Loss Contract.

13. On March 3, 1998 Great-West initiated a wire transfer to reimburse itself for claims paid on the Debtor's behalf between February 17 and 27, 1998. The transfer was unsuccessful. Additionally, the March self-administered bill

was not completed and sent to Great-West along with payment. The Services Contract, at pages 2-3, states the following:

> a. The Contractholder (the Debtor) has advised its bank that Great-West is authorized to demand moneys payable by the Contractholder for checks issued for benefit payments made by Great-West under the Plan; and
>
> b. Great-West will initiate transfers from the Contractorholder's designated bank account with the Transfer Frequency shown in Schedule C. The Contractholder agrees to maintain funds in such account both before and after termination of this Services Contract which are adequate to cover checks issued for benefit payments made by Great-West under the Plan and the Deficit Recoveries defined in the Article entitled Deficit Recovery of the Stop-Loss Contract, is any, issued to the Contractholder by Great-West.
>
> c. The Contractholder agrees to pay Great-West the fees specified in the Schedule of Fees marked Schedule "B" which is attached hereto and forms part of this contract as reasonable compensation for services necessary for the Plan's operation.

14. In this case, the Debtor is responsible for March, 1998 administrative fees and premium, plus the claims paid by Great-West between February 17 and April 7, 1998 but not reimbursed by JG Furniture, in the amount of $27,773.51.

Wherefore, Great-West prays for the court to deny the Objection and allow Great-West's claim in the amounts

of $27,773.51 as a priority unsecured claim pursuant to 11 U.S.C. §507(a)(4), together with interest, attorney's fees, and such other relief this court deems just and appropriate.

Dated: February [6], 2002.

POYNER & SPRUILL LLP

By: /s/ DAVID M. WARREN
David M. Warren
N.C. State Bar No. 12581
Attorneys for Great-West Life & Annuity Insurance Company
Post Office Box 353
Rocky Mount, NC 27802-0353
Telephone: (252) 446-2341

CERTIFICATE OF SERVICE

I, David M. Warren, of Poyner & Spruill L.L.P. certify:

That I am, and at all times hereinafter mentioned was, more than eighteen (18) years of age;

That on this date, I served a copy of the foregoing Great-West Life & Annuity Insurance Company's Response to Amended Trustee's Objection to Allowance of Claim on:

John M. Blust, Esq.
Post Office Box 3324
Greensboro, NC 27402

Michael D. West, Esq.
Bankruptcy Administrator
Post Office Box 1828
Greensboro, NC 27402

by depositing same in the United States mail, first class, postage prepaid.

I certify under penalty of perjury that the foregoing is true and correct.

Dated: February [6], 2002.

POYNER & SPRUILL LLP

By: /s/DAVID M. WARREN

David M. Warren
N.C. State Bar No. 12581
Attorneys for Great-West Life & Annuity Insurance Company
Post Office Box 353
Rocky Mount, NC 27802-0353
Telephone: (252) 446-2341

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

In Re: CHARLES M. IVEY, III, TRUSTEE,

Plaintiff/Appellant,

vs.

GREAT WEST LIFE & ANNUITY INSURANCE CO.,

Defendant/Appellee,

_____/

Civil Action
No. 1:02CV586

Greensboro, North Carolina
January 30, 2003
11:05 a.m.

TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE N. CARLTON TILLEY, JR.

UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: CHARLES M. IVEY, III
IVEY McCLELLAN GATTON
& TALCOTT, L.L.P.
121 South Elm Street
Post Office Box 3324
Greensboro, North Carolina 27402

For the Defendant DAVID M. WARREN,
Poyner & Spruill, L.L.P.
Post Office Box 353
Rocky Mount, North Carolina 27802-353

Court Reporter: Jane F. Calhoun, RPR
Room 101, U.S. Courthouse Building
324 West Market Street
Greensboro, North Carolina 27401
(336) 332-6033

Proceedings reported by stenotype reporter.
Transcript produced by computer-aided transcription.

(Thereupon, the following proceedings were had:)

THE COURT: Good morning.

Mr. Warren, you traveled here from Rocky Mount this morning?

MR. WARREN: Yes, sir, Your Honor. It was a little bit of a challenge, but I'm glad to say we made it.

THE COURT: Not a very pretty day to be on the road.

MR. WARREN: No, sir.

THE COURT: Will 30 minutes a piece work for you all?

MR. IVEY: Your Honor, I think that will be more than sufficient time. This is an issue that I know this Court is very well aware of, so it may not take as much time as some other issues, Your Honor.

THE COURT: It doesn't mean that we can't always use help on it. I am familiar with the issue, and would be appreciative for the help that you give.

Why don't we start, Mr. Ivey, with you, and if you have made 25 minutes, I will ask Ms. Blumke to give you notice that you have five minutes more.

MR. IVEY: Your Honor, I would like to reserve some time, but I will tell the Court now, given the Court's knowledge of this, I will only, if the Court has a question of me, anticipate wanting to reserve response time. I don't think the Court will need any further discussion beyond that.

Your Honor, for the record, my name is Charles Ivey. I am the trustee for the Chapter 7 debtor here. I know the Court is familiar with the issues before the Court, given the Montaldo decision that His Honor has previously rendered. In all due respect to that matter, we're asking that this Court reconsider, or at a minimum, restrict that ruling.

Your Honor, the issue here is basically whether an insurance company can, in effect, stand in the shoes of the employee and take advantage of the priorities that are allowed under 507(a)(4), which is the employee benefit priority under the Bankruptcy Code.

In our brief we kind of bifurcated that issue into whether the insurance company, in effect, has the standing to do it, and even if they did, in the factual situation of this, which is somewhat different from Montaldo, where clearly no employee gave any services, the services were not rendered by employees, whether they could still take advantage of the 507(a)(4).

The facts in this case, Your Honor, are not disputed. They are fairly simple. I'll address them very quickly.

THE COURT: Let me interrupt, and ask on a point you just touched, where you read exclusively employees

into Subsection 4, that contributions have to be employee contributions instead of contributions made by an insurance company.

MR. IVEY: That is correct.

THE COURT: How do you read employee into that?

MR. IVEY: Your Honor, again, I think in going to the Hartford decision from the Supreme Court, I think using their word contextually, I think you got to look at the context of 507(a)(4), which you must, therefore, read with 507(a)(3), the way those two work together, (a)(3) is the 90 day prior to filing wage benefit, (a)(4) deals with the employee benefit plan. It has a formula, without going through the whole formula, the result of the formula is that an employee will either be able to get the full $4,000 because of wages. If he doesn't have a wage claim, then each employee would be limited to the $4,000 of benefit or the two together, but they could never rise greater than that, and when you contextually read that, I believe that the appropriate interpretation of (a)(4) is limiting it to employees and limiting it to their contributions, not payments that would be made under a contract with insurance.

I will concede that when it says services rendered, it doesn't say services rendered by employees. It does not also say services rendered by insurance companies and, therefore, when you take into consideration, Your Honor, the fact of the Hartford decision, which one builds on the proposition that the Supreme Court went all the way back to the '58 decision under the act, that priority should be construed narrowly and then under the Hartford decision when the Supreme Court is also indicating and reiterating that the Bankruptcy Code is not to be given an expansive interpretation, I believe the interpretation that we are asking

this Court to give to this is the correct one, and Hartford is a decision by the Supreme Court that came after this Court's decision in Montaldo and factually, there is a similarity here, Your Honor, because in the Hartford decision is the 506(c), that's the provision where a party can come in and assess the secured creditor with an administrative expense claim. The statute says trustee, and the issue was, can we expand it beyond trustee and the Supreme Court, in effect, said no, and went back to the plain language.

Again here, I think we're trying to expand the language of 507(a)(4) to go beyond what the context was and that's the same way they approached it in Hartford, to go to the insurance company and say employees can be insurance companies, contributions can be the amount paid by the insurance company under a contract, and I think when you look at it in that fashion, Your Honor, the Supreme Court's instructions in Hartford would require that (a)(4) only deal with employees.

THE COURT: Let me sort of tell you what I wrestle with. And I understand your argument about Hartford, but there, there was a term and the Supreme Court limited it to the plain meaning of that term. Here, "employee" is not used. The name of the individual or group or corporation or whoever makes the contribution is not specified, and in looking at subpart three, you know, that specifies earned by an individual, and it specifies exactly what, and there is no question that, you know, you are talking about employee's wages, employee's salaries, employee's commissions, vacation, severance and sick leave for employees, and the one difficulty I have ir trying to understand exactly who services rendered refers to and who contributions refers to is, that Congress knows how to be specific. They obviously, from three, know how to refer to the person who earns, and yet they are not specific in four, and I understand your argument is that you need to read those together and so you

all -- I would like to hear from each of you with regard to that, because I really see that as a problem that I have.

MR. IVEY: I think the Court put its finger right on the issue, and I will agree it's not specific, but I think what the Court has got to weigh is, that if it follows the Montaldo decision and what is being urged by the insurance company, I do believe it would be an expansive reading, whereas I will concede that I'm asking for a restricted reading, and I think when we go to Hartford, the restrictive reading is what is necessary, and I point the Court to the conclusion of the Hartford decision when it said, "In any event, we do not sit to assess the relative merits of different approaches to various bankruptcy problems. It suffices that the natural reading of the text produces the result we announce, achieving a better policy, if what petitioner urges is that is a task for Congress, not the courts."

Again, they emphasize text. They emphasize that both rulings, both interpretations are appropriate, but consistent with being narrow on this and consistent with letting Congress do it, they are not going to be expansive, and I think -- I hope the Court has had, or at least was made aware of the decision of the Fourth Circuit that was rendered after we argued before Judge Stocks. I made Mr. Warren aware of it. I think it also --

THE COURT: I read that before coming in. Thank you for giving us that.

MR. IVEY: Here is why I think that's very pertinent, Your Honor, that is a situation where the Fourth Circuit in a bankruptcy context had an opportunity to speak to Hartford, and we have a situation there where the court really is facing a situation that the courts are almost conceding, this is a clerical error, it really is not even logical to read the Bankruptcy Code to say that a Chapter 7 debtor's

attorney cannot be paid because the bankruptcy court doesn't have the authority to pay him from the assets of the case, even when it's shown that he's benefited the estate. The two circuits said that is correct, and they acknowledged it as an error and went forth and said, well, we're going to give the judge that authority. One said no. That was the status when it came to the Fourth Circuit.

The Fourth Circuit, and I'm sure the Court knows, there are very few cases cited except for Hartford, and they said, no, Congress is going to fix this one, look at Hartford and, therefore, we're going to want to take it exactly as it says, and there, Your Honor, I think the Fourth Circuit at least is giving this Court some guidance, and that is, if it's a situation where the Court has got to be expansive on something really Congress should take care of, let Congress do it.

I would also point the Court back to the history and the issue the Court has, the history of the Statute of 507(a)(4) is, where the Supreme Court was faced with this issue under the act, the predecessor of the code, and they indicated that wage priorities did not include fringe benefits. Congress fixed that. They fixed it with (a)(3), and they fixed it with (a)(4).

I think Mr. Warren is going to have a difficult argument, if he was before the Supreme Court in the face of Hartford and that history, because in effect, what he is going to be arguing is, you told Congress to fix this issue, they fixed it but not quite so, therefore, what we would like for you to do is, don't follow what you did back in '58 under the act, don't quite follow Hartford, create a little exception here, because we all know that the policy we think is proper and let's just go ahead and give an expansive to this one, this is the exception to what you've said, and I think the Supreme Court is not going to do that. I think they have

consistently said the plain language in the Bankruptcy Code is necessary, and we've got to remember, it is a code and, therefore, it is something that the Constitution allowed Congress to create so that there is the same law in effect for everybody and, therefore, when you are trying to do that, I think it is more imperative to restrictively read that code so that a judge in Washington State, a judge in Texas and a judge in North Carolina, all are going to be saying the same thing and they are not going to be applying policy or what is perceived as the policy for it, Your Honor, and, therefore, again, I think (a)(4), therefore, given Hartford and given what the Fourth Circuit has done, should be read in a more restrictive manner than the Court has done before. That also, Your Honor, is consistent, I believe, with the play of the overall aspect of the Bankruptcy Code.

I would point out to the Court, that at least from one who practices in this area, I think that is a very logical code. It addresses most things, and there are places in the Code where more than one party, such as an insurance company and an employer might have the ability to come forward, and the code addresses as a general rule where that's the case, by giving rules and ways to do it and, therefore, for an example, if I were to sell a claim, there is a rule that outlines an assignee, how he comes in assignee. If there is somebody who hasn't filed a claim and the trustee believes that they should have, the trustee gets 30 more days. The debtor gets, at times, more time. In Chapter 11, contingent claims can be allowed only if they are noticed and people file claims where it's not -- somebody doesn't have to. There are rules for that.

So I would say consistent with how I think the code is drafted, if in fact an insurance company could come in, I think that they would have been more specific in the rules addressing how that should happen and whether, for example, is the priority limited only to the payment of the

claim, the fees, or a combination, which is another issue we could address in terms of that and, therefore, to answer the Court's question again, no, the trustee -- I mean, excuse me, the employee's name is not there, the insurance name is not there, but if you look at the history of how the code is developed and how it works, I believe that the interpretation we're asking of this Court is the logical one, consistent with those ideas.

I'll jump then to the services rendered. Your Honor, I would point out that in this case, unlike the Montaldo case, even though the ruling in Montaldo clearly would cover what we're talking about, but factually it was different, we have a situation where there were not any services rendered by employees, and what is created here is that by definition, you're going to have a situation where the insurance company is going to always get the maximum level of this priority because there is never going to be a wage payment because nobody worked within 90 days, so not only is the court expanding it, but they are expanding it where the insurance company is guaranteed -- every time they come in, they are going to get the maximum, which runs back into the policy.

THE COURT: I'm not sure I understand the part about employees will never have worked within 90 days.

MR. IVEY: In this case.

THE COURT: In this particular case?

MR. IVEY: In this particular case, it's a distinction. If where you got a situation where no employee has worked, then the insurance company is guaranteed the maximum, because it's never going to be deducted from (a)(3).

THE COURT: I thought you were talking about in general application.

MR. IVEY: I'm now asking the Court -- if the Court does not want to reconsider the full decision, I think there are grounds here to limit that decision, and that would be one of the reasons, and I would also point out to the Court, that that also points out an interesting issue. I think it goes with some of the other circuits as to a policy. One of the policies that have been cited, and I believe the Court cited to the circuit decisions is, that the insurance companies, in effect, we need the insurance so we can have the benefit plan, and if they don't have this protection, then that may not be available. The problem is, they already are exposed because of the fact that (a)(3) can take this entire protection away from them, and in a lot of cases in Chapter 7, I would contend that the wage claims, along with the benefits are not being paid and, therefore, (a)(4) sometimes is muted out because you got wage claims that have already maxed out the limit and, therefore, there is not any availability, so I would contend to the Court that that risk has already been factored in by the insurance companies, it's really not a gain in policy because of the fact that the insurance company has already shown we're going to enter into contracts in this situation, just as other suppliers would.

And, therefore, Your Honor, again just in conclusion, because I think I addressed to the Court that the primary reasons the Hartford decision looked at the code contextually, and even though trustee was specifically there, they emphasized the text of the statute and how it interplayed, and I think when you do that with (a)(3) and (a)(4) and the Bankruptcy Code, I think the proper way to handle this matter now, Your Honor, is to reverse Judge Stocks again and, in effect, follow Hartford and, therefore, determine that a restrictive reading of (a)(4) is necessary and, therefore, I would ask that the Court reverse the lower

Court's decision, who has now followed His Honor's direction.

Thank you, very much.

THE COURT: Thank you, Mr. Ivey.

Mr. Warren.

MR. WARREN: Thank you, Your Honor. May it please the Court. My name is David Warren, and I'm attorney for Great West Life in this appeal. I guess I would like to concur with Mr. Ivey with respect to the facts. I think they are clear. I think Judge Stocks did a very good job as far as outlining those for this Court, so I don't have a whole lot to add to the specific facts that are before the Court.

I do think there are some differences, great differences of opinion as to how the code is construed, in particular, this particular section 507(a)(4) of the code. Contrary to what Mr. Ivey argued, I don't think that you can construe 507(a)(3) and 507(a)(4) together. If you look at the other priority items in the Bankruptcy Code, 507(a)(1) refers to the cost of administration, and that's back in Section 503 of the Bankruptcy Code; (a)(2), if I remember correctly, deals with involuntary gap claims; (a)(3) we talked about; (a)(4) we talked about; (a)(5), six and seven, those deal with, I believe, grain farmers. One deals with a fisherman. Another one deals with taxes, prepetition taxes. I believe that's the (a)(7), maybe (a)(8) now.

Then (a)(9) deals with divorce matters, where a separation agreement or property settlement should be construed to be a priority claim, and that's a recent change in the code, and I've only dealt with that two or three times in the last three or four years, so they can't really be read together. They do deal with employees because employees

are an important part to a company that is on the brink of bankruptcy. You don't want to have these employees jumping ship, so there are two mentions of employees and employee benefits within the priority scheme, however, my point to the Court is, that you don't necessarily read those together. It doesn't net out. I'll get back to this in just a moment, but it doesn't say if you paid out a specific amount of money in (a)(3), you're not entitled to the payment of money under (a)(4) or a claim, rather, under (a)(4). So that's my first point is, that they are not necessarily read together. You don't read the rest, (a)(1) through, whatever it is, nine or ten, together. They all stand on their own under each circumstance.

The second item would be the reading of the Hartford opinion. Your Honor, what I get out of the Hartford and also subsequent to the Equipment Servicing case that Mr. Ivey mentioned, I get out of that, you read the plain meaning of the statute. The statute that we have before us says nothing about an employee. The Court picked right up on that early on in his argument. It says arising from services rendered. It doesn't say by an employee. It does mention contributions to an employee benefit plan. It doesn't say who makes the contributions, but arguably it is the person who is making the claim, in this case, Great West, but arising from services rendered. The services rendered deals with the benefits that are given and there is no requirement for the employee for whom those services are rendered to be working as an employee, and we cited the ABC Fabrics case, which is very clear, we think, with respect to whether someone has to actually be employed or not.

The ABC Fabrics case, which is a bankruptcy court decision from Florida, dealt with an ex-employee, and I really think it is interesting. In that case, it deals -- on page 766 of the case, it deals with no less than five cases saying

what the services are and who gives those services, and they all don't deal with employees that are working for the debtor at the time during the 180 day period.

The other cases cited, the In Re Braniff case, the Maxwell Newspapers, the Fenton case, the Cardinal Henders case, all of those are good examples of why an employee does not necessarily have to work to be employed at the time, that 180 days, so that is not a condition precedent before the claim being allowed, as would be argued by the trustee in this case.

Again, second item, Your Honor, deals with plain reading of the statute. By looking at the plain meaning of services, they don't have to be limited in any scope to services by an employee, and it is not limited by an employee working at the time during that 180 day period.

My third item would be looking at actual contributions made. I think it's important when the Court considers the effect of the Bankruptcy Code and what the Bankruptcy Code is trying to establish when a company is having a serious problem with meeting its obligations as they become due. The court -- the Congress wrote the code to enable the debtor to survive, especially on the brink of bankruptcy, and also to reward those people who have stayed with the debtor, by staying with the debtor continuing to do business, continuing to provide services to the debtor during this time, during this spiral down into the bankruptcy, and that is not only evident in 507(a)(3) and (4), it is also clearly evident in defenses to preference recoveries or to fraudulent conveyance recoveries. There is a defense to -- if you receive a payment within 90 days that prefers one creditor over another, notwithstanding the receipt of those funds, the receipt of that payment on a past due debt, if you give goods and services again trying to work with the debtor, that's the complete and absolute defense to the

extent of the value of those services, that is the reason, that's why -- that's the theory behind allowing these payments or the claims to Great West as an insurance company providing goods and services and the benefit to the employees, paying their claims during the 180 day period, so this is not without precedent. 507(a)(4) fits right in with the provisions of the Bankruptcy Code.

As an adjunct to that, let's look at the type of payments that were made. The Montaldo case dealt with insurance payments, and I don't think that is an issue as to whether insurance payments are services; they are. This Court has found that. Numerous courts, they are all cited in the brief, have found that services include insurance premiums.

What we have in this case, are not only premium payments and, Your Honor, I think that's approximately three or $4,000, the rest of the claim consists of actual medical payments made to the doctors, hospitals, other medical care providers for the benefit of the patient, the patient/employee, so it goes one-step beyond just a qualification as you found in Montaldo for allowing the premiums to be paid to qualify as a claim. This is actual hard money being paid back to the service providers. Again, that was being done under a contract, under an agreement between the debtor and the insurance company, Great West.

So again, my position on that is, that it's even better than a premium payment, it is actual money for services that are being paid to the medical profession.

I mentioned earlier, but I wanted to come back to it briefly is, that contrary to what the trustee argued, you don't net out from (a)(4) what you received at (a)(3). I think he mentioned that and argued possibly if you are covered under (a)(3), you really don't get to (a)(4). And again, that

was part of my prior item is, that you don't -- they stay independently. There is a qualification that you have to meet, and we think that Great West has definitely met those qualifications; they provided the service under the statute, the courts have allowed this. This Court reviewed this decision earlier. The facts are very similar to Montaldo. The only issue is whether the employees were working at the time or not working at the time, and that's why I bring the Court's attention to the ABC Fabrics case.

THE COURT: Thank you, very much, Mr. Warren.

Mr. Ivey.

MR. IVEY: I would just ask the Court to look to (a)(4)(B)(ii), where it says, just taking out less aggregate amount paid to such employees under paragraph three, so I do think you take it out in (a)(4), and it does relate back to that. This is a tough mathematical formula, but I think the impact of it is, the more you pay there can and does reduce what is available. If the Court has any questions other than that. That's the only comment I wanted to make.

THE COURT: Thank you, sir. Well, I wish I could tell you all that after hearing your arguments, which were very well done, and reading your briefs which were very well done, that I had a firmer idea on exactly what the correct application will be in this case, but we will take another look at it, as we did before in Montaldo, and see if we come to the same conclusion for the same reasons as in Montaldo. I've been wrong before, will be wrong again, and it seems to me it all goes back to exactly whether or not the contributions are referring to employees' contributions and whether services rendered are referring to services rendered by employees. If so, then certainly this is different from Montaldo. If it's not limited to that reading, then the result,

I suppose, will be the same as Montaldo, unless the reading of Great Hartford does restrict that.

So we'll take another look at it. Thank you all for being here.

(Court adjourned at 11:35 a.m.)

CERTIFICATE

I, JANE F. CALHOUN, RPR, United States District Court Reporter for the Middle District of North Carolina, DO HEREBY CERTIFY:

That the foregoing is a true and correct transcript of the proceedings had in the within-entitled action; that I reported the same to typewriting through the use of Computer-Aided Transcription.

Date: [5-26-04]

/s/ JANE F. CALHOUN
Jane F. Calhoun, RPR
Official Court Reporter